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29 March 1991

Sean Patten

REPORT OF THE SCOTTISH WORKING GROUP ON DOGS

You will be aware that last year, as part of our response to the dog registration issue, colleagues agreed that both Chris Patten and Malcolm Rifkind should explore with outside interests what further possible measures might be implemented to tackle dog-associated problems. We in Scotland established a Working Group drawn from a wide range of organisations involved in dog control and dog welfare. The Group have now reported to me and I enclose a copy of their Report for colleagues.

Many of the recommendations contained in the Report could only sensibly be effected on a GB basis and, as such, will be of interest to colleagues. These include those recommending the consolidation, as far as possible, of existing dog-related legislation; a requirement in law that dogs be leashed in public places and banned from certain sensitive areas; the introduction of fixed penalties for dog control offences; the creation of a new offence for dog owners not to carry third party insurance and, all of those concerned with breeding. The latter group represent longer term proposals but I have already written separately to Kenneth Baker on the question of tightening the definition of a breeding establishment in the context of the Private Member's Bill on Breeding of Dogs. The Group also considered last year's consultation paper "The Control of Dogs" and their conclusions reflect the overall response received in Scotland to that paper. Any legislation which results from this paper would of course need to be GB wide.

A number of recommendations, however, relate only to Scotland and I would hope to be able to take these forward as and when the opportunity arises. Some are dependent on primary legislation and are for the medium to longer term. These are the creation of a new poop-scoop offence (the existing primary legislation for the control of fouling is proving ineffective and precludes the use of poop-scoop byelaws) and an extension of the application of the law in Scotland which deals with dangerous and annoying creatures.

Other recommendations do not rely on primary legislation and I propose to implement the first of these relating to model byelaws, immediately. The

byelaws would allow authorities to require dogs to be leashed in designated areas and to be banned from sensitive areas, such as children's play areas. The second set of recommendations, some of which I would want to take forward quickly, are those which address the question of educating existing and potential dog owners of their responsibilities to the animal, and to the public at large. We have long recognised that legislation in itself is unlikely to offer a complete solution without a change in the public's attitude. I shall obviously need to consider carefully these recommendations requiring a financial input from the centre.

The existence of the Group is public knowledge in Scotland and there is a general expectation that the Report will be published. I recognise that publication may well re-open the dog debate particularly registration, although the Report only touches on this and members of the Group were divided in their views. Those organisations represented on the Group are anxious for the Report to be made available, however, and I would find it difficult to defend not publishing since it would call into question our willingness to tackle the dog problem.

I should, therefore, like to announce the Report's publication. In so doing I propose to indicate that the model byelaws on leashing and banning will be made available immediately and that I am considering the other recommendations carefully and will announce my conclusions on them in due course. This will allow me to consider the Report at the same time as we are considering what our response should be to "The Control of Dogs" consultation paper.

I should be grateful to know by 15 April, if you or any other colleague is not content for me to proceed in this way.

At this point in time I am only giving a limited circulation to the Report. You may, however, feel it should receive wider consideration and I should, of course, be quite happy with this.

Copies go to the Prime Minister, Kenneth Baker, Michael Heseltine, David Hunt and to Sir Robin Butler.

Yours sincerely,
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REPORT OF
THE WORKING GROUP ON DOGS

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REPORT OF
THE WORKING GROUP ON DOGS

REPORT OF WORKING GROUP ON DOGS

SUMMARY OF RECOMMENDATIONS

CURRENT STATUTORY POSITION: CHAPTER 2

1. The Group recommend that consideration should be given to a Dogs Bill which would consolidate and amend existing legislation as it applies to dogs. Page 10

ACTION ON DOGS: CHAPTER 3

2. The Group recommend as a matter of urgency that section 48 of the Civic Government (Scotland) Act 1982 should be amended to make it an offence for a person in charge of a dog to fail to remove immediately any faeces deposited by that dog in any public place. Page 11

3. The Group recommend that section 27 of the Road Traffic Act 1988 be repealed so as to open the way for the district and islands councils to make byelaws requiring dogs to be held on leads on roads and pavements. Page 12

4. The Group recommend that the Government should bring forward primary legislation requiring dogs to be held on a lead in public places, other than those designated as exercise areas, and banning dogs from certain sensitive areas. Page 12

5. The Group recommend that until such time as primary legislation can be brought forward model byelaws for leashing and banning should be commended to district and islands councils. Page 12

6. The Group recommend that adequate resources are made available for the proper and effective enforcement of the new measures contained in the Environmental Protection Act 1990. Page 13

DANGEROUS AND AGGRESSIVE DOGS: CHAPTER 4

A new offence of allowing any dog to be dangerously out of control.

7. The Group recommend that the two issues of a. dangerous and b. out of control should be considered separately.

Page 14

Additional powers for local authorities and police to destroy a dog which appears to be dangerously out of control and to seize and detain a dog after an incident.

8. The Group recommend that clear guidelines should be drawn up setting out how dangerous and out of control a dog needs to be before any decision is made to have it destroyed immediately. They recommend that any decision to destroy a dog in these circumstances should be taken by the police in consultation with a vet and the owner or keeper if known and available for discussion. The resulting destruction which should be carried out by a vet or, in exceptional circumstances, by police, should not be open to challenge by the courts.

Page 15

The need for increased or additional powers to secure the destruction of dangerous dogs.

9. The offence provisions contained in section 49 of the Civic Government (Scotland) Act 1982 should apply anywhere and not just in a public place.

Page 15

Whether a new offence should be created of allowing a dog to be persistently at large.

10. The Group recommend that the word "persistently" should be omitted.

Page 16

Fixed Penalties

11. The Group recommend that powers to issue fixed penalty notices should be used for all dog control offences, including straying and failure to comply with the collar and tag regulations. They further recommend that, in order to ensure stricter enforcement, delegated authority for issuing fixed penalty notices should be given to the "proper officer" of a local authority.

Page 16

Further Measures

12. The Group recommend that the Government bring forward primary legislation to make it an offence for dog owners not to carry third party insurance.

Page 16

Breeding Controls To Reduce Dog Aggressiveness

13. The Group recommend that the definition of breeding establishment contained in the Breeding of Dogs Act 1973 be amended and that local authority officers be given additional powers to enter and inspect breeding establishments.

Page 18

14. The Group recommend that the Government make funds available for research into temperament testing.

Page 18

15. The Group recommend that if any dog is judged temperamentally unsuitable for breeding then consideration should be given either to having that dog put down or neutered.

Page 18

16. In the longer term the Group recommend that temperament tests should be used by breeders as a basis for assessing the temperament of their stud dogs and should provide a report on the results to customers.

Page 18

17. The Group recommend that customers should buy puppies from a reputable breeder and that potential customers or their representatives should be given access to information on both parents of the puppies. If the sire of the puppy is unknown the potential customer should be made aware of the fact. The Group further recommend that breeders should take into account the experience and circumstances of their potential customers before recommending a particular dog and that breeders should provide customers with information on responsible dog ownership, such as the address of local dog training clubs.

Page 18

18. The Group recommend that a Code of Conduct should be established in order to regulate the breeding of dogs. They further recommend that the Government introduce legislation which would give statutory backing to such a code.

Page 19

EDUCATION: CHAPTER 5

19. The Group recommend that district and islands councils continue to play a major role in the direct education of the public on dog control and welfare matters, and that they expand that role to encompass partnership with the voluntary sector.

Page 20

20. The Group recommend that Education Authorities should be reminded that the SSPCA and other organisations have produced teaching materials on responsible pet-ownership for use in schools. They also recommend that Education Authorities should be made aware of the importance which the Government place on encouraging responsible dog ownership.

Page 21

21. The Group recommend that the Government mount periodic press and media campaigns aimed at the dog owning community and that they make available funds for the development and distribution of a national information leaflet based on the Kennel Club's Canine Code.

Page 21

22. The Group recommend that the Government should make funds available to animal welfare organisations to ensure continuity and expansion of their neutering and spaying schemes.

Page 22

1. BACKGROUND

1.1 The problems associated with dogs are various and interconnected. They include the nuisance and health risks caused by fouling of public places, nuisance caused by - and suffering inflicted on - stray and abandoned dogs, attacks on people by dogs, livestock worrying and the abuse of dogs bred and kept for fighting. It is estimated that there are between 700 and 800 thousand dogs in Scotland and all the evidence suggests that the number is growing quickly.

1.2 Dog-related problems have been individually addressed by legislation from time to time but there has been growing public concern about what are perceived to be the three major problems on which existing legislation appears to have little impact. These are the number of reported dog attacks, the control and disposal of stray dogs and the control of dogs in public places, in particular fouling by dogs. The current statutory position is discussed in Chapter 2.

1.3 As part of their response to the problems the Government set up, in March 1990, the Scottish Working Group on Dogs. Membership of the Working Group was drawn from a wide range of bodies with experience in dog associated problems and included representatives of the police and local authorities. The full membership of the Working Group is listed at Appendix A.

1.4 The Group were asked to investigate and advise on measures to strengthen the existing law relating to dogs. The full text of the Group's terms of reference is set out at Appendix B.

1.5 To assist them in their deliberations, the Group had available to them the responses received to the Government's consultation papers "Action on Dogs" issued in 1989 and "The Control of Dogs" issued in the summer of 1990. "Action on Dogs" dealt with general dog control problems such as straying and fouling while "The Control of Dogs" was aimed at dangerous dogs and reducing the incidence of dog attacks. Separate consideration is given to these papers in Chapters 3 and 4 respectively.

1.6 The Group undertook their task against the background of the ongoing debate on dog registration. Although this was not part of their remit, the majority of the Group felt that a simple and effective registration scheme would provide the thread which would bind together the wider package of measures which the Government and the Group themselves have proposed.

1.7 Irresponsible dog owners are central to the problems associated with dogs. These are the people who care little for their dogs or for the health and safety of the general public, who allow their dogs to foul indiscriminately and who allow their dogs to stray, a contributory factor to the rising number of reported dog attacks. Efforts to change public attitudes are crucial to alleviating the problems and many of the Group's recommendations are therefore framed with this in mind.

1.8 A recent survey of local authorities estimated that in Scotland in year 1989/90 around 13,800 strays were accounted for. These figures did not include strays dealt with by the police and it would be reasonable to assume that a true figure would be substantially higher. To deal with the problem, 34 local authorities in Scotland employ full or part-time dog wardens. Appendix C gives details. Their experience, however, has shown that the role of the dog warden is much wider than that of merely a dog catcher and encompasses the vital area of educating and advising existing dog owners and those of the future, in particular school children.

1.9 The incidence of dog fouling on footpaths and in other public places has probably generated more complaints and expressions of concern than any other dog-related problem. Even otherwise responsible dog owners may allow their dogs to foul in public places. Given the nuisance caused and inherent health risks it is quite understandable that the public should feel so strongly about dog fouling and there have been representations in recent years about the strengthening and enforcement of the existing legislation. Many have argued that the provisions under sections 48 of the Civic Government (Scotland) Act 1982 which make dog fouling an offence in Scotland should be reviewed and that consideration should be given to formulating a set of byelaws that would allow local authorities the opportunity to control dogs in public places. The problem of dog fouling and how this should be tackled is discussed in Chapter 3.

1.10 Dog attacks on people are a significant problem both in terms of incidence and severity and public anxiety has been aroused over recent widely publicised incidents. Studies conducted in Australia, the USA and Europe including the UK, using information supplied to medical authorities, suggest that the incidence of dog attacks in the UK probably lies in a range somewhere between 550 and 1,400 attacks per 100,000 people per year. These are only the attacks requiring medical attention - there will be many other minor incidents which go unreported, especially in cases where owners have been bitten by their own dogs. The probability of being bitten by a dog over a typical lifetime is between 32 and 62 per cent. The increase in the number of dogs (an average of 2.8 per cent per year population growth since 1980) and a trend towards owning large breeds of dogs suggest that the problem of dog attacks will worsen unless adequate counter-measures are taken. Recent public disquiet and publicity about attacks by certain large breeds, however, has led to a diminution in the general popularity of such breeds.

1.11 Just as an owner has a responsibility to his or her dog and to the public, so has the breeder a responsibility to dogs under his or her care, to the potential owner and through him or her to the general public. Dog breeders are in a unique position in that they have an intimate knowledge of the breed with which they work. They can design their breeding programmes either to bring out the best and publicly most acceptable characteristics of the breed or they can choose to do the opposite. The Group considered that breeding programmes play an important part in the inherent aggressiveness of many dogs and they therefore considered ways in which unscrupulous breeders might be forced to take their responsibilities seriously. This is discussed in Chapter 4.

1.12 Dog owners form a substantial part of the population and it is only right that they should be able to enjoy the companionship and the degree of security which their dogs afford. But in the same way that owners should be able to enjoy public places in the company of their dogs, other people should also be able to enjoy those places free from the nuisances which dogs can cause. The object of the Group's recommendations is to provide a framework within which this balance can be achieved.

2. CURRENT STATUTORY POSITION

2.1 The existing legislation relating to dogs, insofar as it applies to Scotland, is contained in 18 separate statutes. The majority are Acts which apply throughout Great Britain but there are some which are unique to Scotland, for example the Civic Government (Scotland) Act 1982. The legislation attempts to deal, at various levels, with the control of dogs in public places, dangerous dogs, the protection of livestock from dogs, the welfare of dogs and the breeding and sale of dogs.

2.2 The legislation is piecemeal, resulting in a complex body of statute which can cause confusion for the courts, the legal profession, the enforcement agencies and the lay person. As an example of this complexity one need look no further than the relationship between section 49 of the Civic Government (Scotland) Act 1982, the Dogs Act 1871, the Dogs Act 1906 and the Dangerous Dogs Act 1989.

2.3 Under section 49 of the 1982 Act it is an offence for any person to allow a creature (including a dog) to endanger or injure any person who is in a public place or to give that person reasonable cause for alarm or annoyance. Where a court convicts a person of an offence under this section it can, in addition to any other disposal such as a fine, order the destruction of the creature and can authorise a constable, in pursuance of such an order, to take possession of the creature. This section, however, is without prejudice to section 2 of the Dogs Act 1871 which in turn has to be read with section 1 of the Dangerous Dogs Act 1989.

2.4 Section 2 of the 1871 Act provides that a court may take cognizance of a complaint that a dog is dangerous and may order it to be kept under proper control or be destroyed. Section 1 of the 1989 Act provides courts with additional powers to facilitate the destruction of the animal as ordered under section 2 of the 1871 Act and to deal with persons who fail to comply with a section 2 order.

2.5 This one example illustrates the complexity of the legislation. Another problem is that the majority of current statutes deal with other animals as well as dogs. The Group therefore recommend that consideration should be given to the introduction of a Dogs Bill which would consolidate and amend existing legislation as it applies to dogs.

2.6 In Northern Ireland, where the main statutory provisions are contained in a single piece of legislation - the Dogs (Northern Ireland) Order 1983 - all those involved in animal welfare pointed to the 1983 Order as being of great advantage in providing a framework within which the problems associated with dogs could be tackled.

2.7 Appendix D provides in tabular form details of the existing statutes, together with an indication of amendments which the Group consider to be necessary.

3. ACTION ON DOGS

3.1 The "Action on Dogs" consultation paper set out a seven point plan to deal with general dog control problems. The main proposals were that district and islands councils should be given a statutory duty to collect and dispose of stray dogs; that owners who reclaim dogs which have been picked up as strays should be required to pay a fixed charge in addition to daily kennelling charges and that byelaws should play a greater part in the control of dogs in public places. During the course of the Group's deliberations the Government implemented the proposals relating to straying and better enforcement of the existing collar and tag rules. Statutory provision is now contained in the Environmental Protection Act 1990. The resource implications of these provisions have still to be discussed with the Convention of Scottish Local Authorities but it is not expected that the provisions will come into effect before April 1992. There still remains, however, the question of what role local byelaws can play in general dog control matters and the Group gave careful consideration to this question.

Fouling

3.2 Fouling of public places by dogs has long been a major source of complaint and concern given the inherent health hazards. The majority of the more common diseases spread from dogs to humans, and some of the less common are transmitted through dog excrement. Effective measures to control fouling will therefore have a significant impact on these diseases and consequently reduce demands on the health service. There is already in Scotland primary legislation which attempts to control dog fouling. Under section 48 of the Civic Government (Scotland) Act 1982, it is an offence for any person in charge of a dog to allow it to deposit its excrement in any of the public places specified in the section (footpaths, children's play areas etc). The offence is punishable, on summary conviction, by a fine of up to level 2 on the standard scale (currently £100).

3.3 There is general recognition that these provisions are difficult to enforce. They also preclude the introduction of byelaws. The Group therefore considered whether section 48 of the 1982 Act should be amended so as to allow district and islands authorities to make byelaws to control fouling. They concluded that byelaws would not be the most effective control. Fouling is a Scotland wide problem and there could be no guarantee that byelaws would be adopted throughout the country. In order to ensure uniformity of approach and to avoid confusion in people's minds, the Group were of the view that the control of fouling should remain in primary legislation but that the offence provision contained in section 48 should be changed to provide for the "poop scoop" principle.

3.4 The Group therefore recommend as a matter of urgency that section 48 of the 1982 Act should be amended to make it an offence for a person in charge of a dog to fail to remove immediately any faeces deposited by that dog in any public place. The penalty attached to the offence should be such that it acts as a real deterrent and the Group therefore suggest that it should be more than the existing penalty.

Dogs on Leads/Dog Bans

3.5 There is already existing primary legislation requiring dogs to be held on leads. Under section 27 of the Road Traffic Act 1988, it is an offence for a person to cause or permit a dog to be on a designated road without the dog being held on a lead. The power to designate a length of road for this purpose is exercisable by roads authorities - regional or islands councils - in accordance with the Control of Dogs on Roads Order (Procedure) (Scotland) Regulations 1962. The regulations provide inter alia that notice of a proposal to make an order designating a road must be published in a newspaper, and that the proposal may be subject to a public enquiry if objections are raised. Also signs must be erected along a designated road to ensure that "adequate information as to the effect of the order" is given to persons using that road. Probably because of these cumbersome procedural provisions, roads authorities have made no use of this power which might better be exercised at district level. Accordingly the Group recommend that section 27 of the 1988 Act be repealed so as to open the way for district and islands councils to make byelaws requiring dogs to be held on leads on roads and pavements.

3.6 The Group believe that requirements for dogs to be held on leads should not be confined to roads and that such requirements should be extended to other areas where the public have access. They were strongly of the view that dogs should be on leads at all times in public places unless very exceptional circumstances prevailed and that this provision should be contained in primary legislation. They recognised, however, that an important aspect of dog welfare is that dogs should receive adequate exercise. They felt it important, therefore, that appropriate provision should be made for dogs to be exercised off the lead. Local authorities should bear this in mind, particularly when planning new parks. Consideration should also be given to banning dogs from certain sensitive areas such as children's play areas.

3.7 The Group therefore recommend that the Government should bring forward primary legislation requiring dogs to be held on a lead in public places, other than those designated as exercise areas, and banning dogs from certain sensitive areas. In making this recommendation, however, the Group recognise that it may be some time before primary legislation can be brought into force. Accordingly they recommend that, until such time as primary legislation can be brought forward, model byelaws for leashing and banning should be commended to district and islands councils. The proposed models are contained in Appendix E together with associated guidance.

Stray Dogs

3.8 In its "Action on Dogs" package the Government proposed the following set of measures to deal with stray dogs, all of which were fully endorsed by the Working Group.

* District and islands councils should have a statutory duty to collect, receive, hold and dispose of stray dogs.

* The proper officer of the council should be required to hold a stray dog for 7 days from the date on which it was seized or the date on which the owner was notified of its seizure, unless it is in such a condition that immediate destruction is considered necessary.

* After the statutory holding period expires, the proper officer should have discretion to sell, give away, or destroy any dog which has been seized as a stray.

* When a stray dog is reclaimed, the district or island council should be empowered to charge such amount as they think fit subject to a prescribed maximum, in addition to kennelling charges.

3.9 These proposals were implemented during the 1989-90 session of Parliament in the Environmental Protection Act 1990. The Group have no further recommendations to make on the collection and disposal of stray dogs but they recommend that adequate resources are made available for the proper and effective enforcement of the new measures.

4. DANGEROUS AND AGGRESSIVE DOGS

THE CONTROL OF DOGS CONSULTATION PAPER

4.1 Against the background of a growing public concern about the increase of reported attacks by dogs the Government issued a consultation paper with proposals aimed at reducing the incidence of dog attacks.

4.2 The principal legislation concerning attacks by dogs is the Dogs Act 1871 which provides that, where a dog is dangerous and not kept under proper control, a court may order that the dog must be kept under proper control or take steps to bring about its destruction. This is not criminal legislation. Following the Dangerous Dogs Act 1989, a court may now, in addition to ordering that a dog be handed over for destruction, order that a person be disqualified from keeping a dog in future. The 1989 Act also created a criminal offence of not complying with an order of the court for which, depending on the circumstances, the maximum penalties range from £400 to £2,000.

4.3 In addition, in Scotland section 49 of the Civic Government (Scotland) Act 1982 contains provisions relating to dangerous and annoying creatures (including dogs). Under section 49(1) of the 1982 Act any person allowing a creature in his charge to endanger or injure any person who is in a public place or to give that person reasonable cause for alarm or annoyance is guilty of a criminal offence and is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale (currently £100). The offence is absolute and it is not a relevant defence to argue that control was exercised but failed to prevent danger, alarm or annoyance. Also, under section 49(6) of the 1982 Act, where a court convicts a person of an offence it can, in addition to any other disposal such as a fine order the destruction of the creature and can authorise a constable, in pursuance of such an order, to take possession of the creature.

4.4 "The Control of Dogs" consultation paper set out a proposed series of measures for consideration that would help to alleviate the problems caused by dangerous dogs. These included a new offence of allowing any dog, whatever its breed, to be dangerously out of control; new powers for local authorities and the police to destroy a dog which appears dangerously out of control and to seize and detain a dog after an incident and new powers for the courts to order dangerous dogs to be muzzled or leashed. The paper also discussed restrictions which might apply to certain types of dogs which are perceived as being particularly dangerous and to the ownership of these dogs.

4.5 The Working Group considered each proposal and their views are set out below.

A New Offence of Allowing Any Dog to be Dangerously Out of Control

4.6 The Group generally welcomed this proposal but recommend that the two issues of a. dangerous and b. out of control should be

considered separately. "Out of control" might mean a dog which is off the leash. Any dog witnessed to be off the leash and dangerous, ie a dog which is about to inflict or has inflicted injury, could be regarded as dangerously out of control. The precise formulation of the new offence and the range of penalties should take account of these two dimensions.

Additional Powers for Local Authorities and Police to Destroy a Dog Which Appears to be Dangerously Out of Control and to Seize and Detain a dog After an Incident

4.7 The Group recommend that clear guidelines are required as to how dangerous and out of control a dog needs to be before any decision is made to have it destroyed immediately. They recommend that any decision to destroy a dog in these circumstances should be taken by the police in consultation with a vet and the owner or keeper, if known and available for discussion. The resulting destruction, which should be carried out by a vet or, in exceptional circumstances, by the police, should not be open to challenge by the courts.

Courts to be Empowered to Impose Muzzling and Other Controls on Dogs

4.8 The Group were divided on the question of muzzling. Some members doubted whether muzzling was good for a dog in that it could adversely affect temperament, although it was pointed out that these problems could be overcome with a better designed muzzle. On balance the Group were of the view that muzzling need not be perceived in a negative light and that it was distinctly preferable to the destruction of the dog.

Courts to be Empowered to Make an Interim Muzzling Order

4.9 The Group agreed with this proposal.

The Need for Increased or Additional Powers to Secure the Destruction of Dangerous Dogs

4.10 This proposal had been included in the paper because in England and Wales the courts have no powers to order the destruction of a dog following a conviction under the Town Police Clauses Act 1847. In Scotland, however, the courts have powers to order the destruction of a dog under section 49 of the Civic Government (Scotland) Act 1982 and can authorise a police constable to take possession of an animal in pursuance of such an order. However, the offence provisions of this section only apply in a public place and the Group therefore recommend that they should apply anywhere.

Whether Certain Types of Dogs Should be Subject to Particular Controls

4.11 The Group considered that large dogs were more dangerous than small dogs and that intact male dogs were also more dangerous. The Group also looked at whether it might be better to target any controls by weight rather than breed but concluded that as weight varied within breeds this approach should not be adopted.

4.12 In general the Group were opposed to the notion of controls for specific breeds and concluded that specific measures aimed at owners were likely to prove more effective than precise controls aimed at specific breeds. The Group's general view was that, with the introduction of other controls for dangerous dogs, the need for particular controls for particular breeds diminished.

Whether a New Offence Should be Created of Allowing a Dog to be Persistently at Large

4.13 The Group supported this proposal. They recommend however that the word "persistently" should be omitted from the offence since it could be extremely difficult to define.

Fixed Penalties

4.14 The Group recommend that powers to issue fixed penalty notices should be used for all dog control offences, including straying and failure to comply with the collar and tag regulations. They further recommend that, in order to ensure stricter enforcement, delegated authority for issuing fixed penalty notices should be given to the "proper officer" of a local authority.

Further Measures

4.15 In addition to the proposals contained in the "Control of Dogs" consultation paper the Group looked at whether there were any other specific measures which could be taken for the protection of the public. The Animals (Scotland) Act 1987 imposes strict liability on owners for injury or damage caused by their dogs. This means that it is not necessary to prove negligence on the part of the owner for him or her to be liable in a civil court action for damages.

4.16 Sensible owners will already carry specific third party insurance against the possibility that they may be sued. Many others - probably the majority - will not. It is important that successful litigants should be able to collect any damages awarded to them. In view of this, the Group considered that it was important that all dog owners should carry third party insurance and accordingly they recommend that the Government bring forward primary legislation to make it an offence for dog owners not to do so. Insurance companies are likely to weight their policies against what they perceive to be the more dangerous breeds and cross-breeds. This should prove a disincentive to ownership of these breeds which, in turn, will make it less attractive to breeders to breed them.

BREEDING CONTROLS

4.17 The Group considered that many factors inter-relate to give rise to attacks by dogs, for example, actions by humans provoking attacks, stray dogs, inadequate dog training and breeding for aggressiveness.

4.18 Although education, has a role to play in trying to get both dog-owners and victims to minimise the risk of dog attacks, the Group felt that on its own it would fail to address one key factor.

This is that certain types of dog have been, are and will continue to be bred for aggressiveness.

4.19 Aggressiveness is polygenic, ie it is controlled by several genes. In wild animal populations the aggressiveness of animals is regulated by forces of natural selection operating in opposing directions. An animal that is not aggressive enough will fail to compete and secure its fair share of resources. An overly aggressive animal will, on the other hand, expose itself to excessive risk of injury and will waste time and energy fighting. As a result wild animals have evolved to be moderately aggressive.

4.20 Because aggressiveness is regulated by several finely balanced biological controls, the potential for changing aggressiveness by selective breeding is immense. This can be illustrated by looking at the Rottweiler. The breeding of Rottweilers has to a large extent been controlled by the German Rottweiler Club and the control they have exercised has been considerable. To obtain a pedigree certificate for a puppy both the sire and the dam of that puppy must have been inspected by one of the Club's breed wardens prior to mating. An important part of this inspection is a temperament test in which the warden assesses both parents for signs of fearfulness and fearlessness. If the balance between the two is outwith the parameters laid down by the club, the dog will have failed the test and pedigrees will not be provided for any offspring. Although data is not available on the intensity of selection (ie what proportion of breeding animals are rejected) this is probably the most intensive and directional temperament selection that any modern breed of dog has been subjected to.

4.21 The same techniques are used in the case of other breeds and cross breeds. Unscrupulous use of these techniques has resulted in the highly aggressive American Pit Bull Terrier, an animal which features prominently in dog fighting circles. A recognised characteristic of dogs bred for aggressiveness is the lack of any form of threat prior to attack. This makes them especially dangerous to children because children will often be unaware of more subtle changes in dog behaviour that might give warning to an adult.

4.22 Under the Breeding of Dogs Act 1973, any person who keeps a breeding establishment has to be licensed by his or her local authority. A breeding establishment is any premises (including a private dwellinghouse) where more than two bitches are kept for the purpose of breeding for sale. This definition has given rise to unlicensed breeding establishments, the so called "puppy farms" some of which are a shameful example of animal neglect. These establishments are outwith the controls of the 1973 Act because, being unlicensed, local authority officials have no right of access or inspection. The Group were strongly of the view that these establishments should be subject to control.

4.23 One way to bring these establishments within the scope of the 1973 Act would be to amend the definition of breeding establishment to provide that it would be any premises (including a private dwelling) where more than one bitch is kept for the purpose of breeding for sale. The effect of this would be to make it more difficult for the suspected breeder to claim that he or she was

breeding on an ad-hoc basis. In order to provide for effective enforcement the Group felt that it would be necessary to provide local authority officials with additional powers of entry and inspection. They propose that local authority officers should be empowered to obtain a warrant to enter premises (excluding a private dwellinghouse) which they had reason to believe were being used for dog breeding. The effect of this would be that all out buildings, garages and sheds would become open to inspection. Although it would remain theoretically possible to continue breeding illegally in a dwellinghouse, this would be unlikely to be on a substantial scale. The Group therefore recommend that the definition of breeding establishment contained in the Breeding of Dogs Act 1973 be amended as suggested above and that local authority officers be given additional powers to enter and inspect breeding establishments. Taken together these recommendations should significantly strengthen the hand of local authorities against unscrupulous breeders.

4.24 The foregoing recommendations for legislative change would go some way towards reducing the numbers of unscrupulous breeders but would do nothing to regulate actual breeding practices. The Group felt that this was an area worthy of consideration.

4.25 As a starting point the Group considered that it was the duty of every dog breeder to have sufficient familiarity with the temperament of both the sire and the dam to know that neither could be considered dangerous. They considered that where possible, the results of objective and repeatable temperament tests should be taken into consideration. Such tests are technically feasible but they would require a considerable amount of research. The Group therefore recommend that the Government make available funds for research into temperament testing.

4.26 The Group considered that there was a particularly heavy burden of responsibility upon the owners of stud dogs to ensure that their temperament was stable and non-aggressive. The temperament of these dogs should be described honestly and accurately to potential customers. The Group recommend that if any dog is judged temperamentally unsuitable for breeding, then consideration should be given to having that dog either put down or neutered. At the very least, stringent precautions should be taken to prevent unintended mating. The Group further recommend that in the longer term, provided scientifically sound temperament tests have been developed, breeders should use these tests as a basis for assessing the temperament of their stud dogs and should provide a report on the results to customers.

4.27 In the case of puppies the Group strongly recommend that customers should buy puppies from reputable breeders. The Group also recommend that customers or their representatives should be given access to information on both parents of the puppies. If the sire of the puppies is unknown then potential customers should be made aware of the fact. They further recommend that breeders should take into account the experience and circumstances of their potential customers before recommending a particular dog and that breeders should provide customers with information on responsible dog ownership, such as the address of local dog training clubs.

4.28 In essence these recommendations amount to a Code of Practice for breeders. The Group recognised, however, that without legislative backing any Code might prove worthless. They therefore recommend that the Government introduce legislation which could give statutory backing to the proposed Code. The specific objectives of the proposed legislation should be firstly to prevent the passing on of dogs known to be dangerous to a second, possibly unsuspecting owner (several such transactions are known to have resulted in serious dog attacks in Great Britain); secondly, to provide immediate controls over irresponsible dog breeders; thirdly, to provide a legislative vehicle for introducing future controls, by way of regulation, on the breeding of dangerous dogs, as understanding of the scientific basis and practicalities of dog breeding improves; and, fourthly, to attempt to instil a high degree of professionalism throughout the dog breeding community.

5. EDUCATION

5.1 A substantial body of educational material on responsible dog ownership is currently available to the general public. This is to be welcomed because education must be a significant element of any successful package of dog control measures.

5.2 Of the 56 district and islands councils, 34 already have dog-related education programmes in place in one form or another. The form of the programmes varies from area to area, as does the emphasis placed on the various problems associated with dogs. For example while fouling may be a major problem in urban districts and thus take up the bulk of the educational effort in these areas, it may not be regarded as a problem in rural areas where educational efforts may be focused more on straying and the risks to farm livestock.

5.3 Voluntary organisations and clubs, such as the Scottish Society for the Prevention of Cruelty to Animals and the Scottish Kennel Club, also issue their own educational material, as does the pet food industry. In particular the SSPCA have made education packs on animal welfare available to schools, although the material does not form part of the formal curriculum. Understandably the voluntary and club sectors concentrate the majority of their efforts on their members and supporters - a narrow audience which, in the main, is already acting responsibly. Financial and other limitations also make it difficult for these sectors to reach a wider audience. Although in theory the pet food industry can reach a wider audience, their material is usually only distributed on demand and product marketing is an important consideration in deciding which message, if any, should be communicated.

5.4 As already highlighted, education, particularly at local level, is one of the keys to successful dog control. The Group therefore recommend that local authorities should be encouraged to play a major role in educating the public on dog control and welfare matters. The Group saw this role as twofold and one which could be brought into play immediately. Firstly, this could be done by providing education directly through their "dog warden" services. Local authority dog wardens may be perceived primarily as dog catchers. This, of course, is only one part of the dog wardens' role and more emphasis therefore needs to be placed on their educational and advisory roles. Secondly, the Group saw local authorities having a role to play in partnership with the voluntary sector. In addition to national organisations such as the SSPCA and the Scottish Kennel Club, there are numerous local organisations, each a ready source of information on dog control and welfare matters. Local authorities should utilise this resource. Although it will be for individual authorities to decide how best to go about this task the Group have identified three areas where local authorities can play a more active role. Firstly, they can co-ordinate the work of the local groups to provide a more coherent and directly focused educational effort. Secondly, they can make available local authority facilities such as halls and schools, either free or at modest charge, for use by local groups for purposes such as dog training. There is a significant demand for dog training classes which is not being

met because of lack of facilities. Thirdly, authorities can make available materials and financial resources to local groups so that they in turn can target specific problem areas which have been identified by authorities.

5.5 The Group are of the view that future and potential dog owners should also be made aware of what it means to keep a dog. An easily identifiable and, in the main, receptive and willing audience are school children, in particular primary school children. The Group were of the opinion that there is real potential to encourage more responsible attitudes towards dog ownership amongst school children by the use of attractive and educational training materials. The objective would be to carry this sense of responsibility into the family and into adulthood. Reference has already been made to the education packs which the SSPCA make available to schools. Where these packs are used, they are generally well received by both teachers and pupils. However, not all schools utilise this resource. Accordingly the Group recommend that education authorities should be reminded that these packs are available for use in schools. They also recommend that Education Authorities should be made aware of the importance which the Government attaches to encouraging responsible dog ownership from childhood onwards.

The material developed by the SSPCA does not concentrate solely on dog control matters. The Group consider that this is the best approach - children have many varieties of pets and animal welfare generally should also figure prominently. However, the Group are of the opinion that important dog control messages, such as those aimed at fouling, general obedience training and keeping one's dog under proper control at all times, should be integral parts of the material. Accordingly, they hope that in any revision of the material the SSPCA would take account of these important messages.

5.6 The Group also considered that the Government had a direct role to play in educating the public. Dog owners are not confined to one particular area and in order to target the group as a whole it will be necessary to make a national effort. Neither local authorities nor the voluntary sector have the means or the resources to do this effectively. The Group considered, therefore, that the Government should mount periodic national media and press campaigns designed to communicate, as simply and as effectively as possible, the main messages on dog control to the dog owning community at large. In addition the Group considered that printed material should be made available on a national scale. There is already an attractive and informative leaflet entitled "The Canine Code" produced by the Kennel Club which is available through Scottish Kennel Club members. The Group considered that this document could be used as a basis for developing a national leaflet and that the voluntary sector were best placed to undertake this task. Accordingly the Group recommend that the Government mount periodic press and media campaigns aimed at the dog owning community at large and make available funds for the development and distribution of a national information leaflet.

5.7 Measures to control the dog population also play an important part in tackling dog associated problems. Currently there are two neutering and spaying schemes operating in Scotland. One is a joint scheme run by the SSPCA and the British Small Animals

Veterinary Association. This scheme offers a discounted service to the public through local vets. There is also an in-house scheme operated by the SSPCA alone which offers a free service to anyone obtaining a dog from the Society. The Group felt that it was important to publicise the existence of these schemes and any new ones, such as that which the British Veterinary Association is about to launch. The Group also felt that it was important to ensure that these schemes continued and expanded. The Group therefore recommend that the Government should make funds available to animal welfare organisations to ensure continuity and expansion of the schemes.

GROUP REPRESENTATION

APPENDIX A

WORKING GROUP ON DOGS - REPRESENTATION

Chairperson:	Mrs G M Stewart
Secretariat: (Secretary)	Mr C L Darroch Mr N Murray Mrs M Morrison
Solicitor's Office, Scottish Office	Mrs E Nicholson
Crown Office	Mr G Williams Mr M McLeod Mr G Fraser
Association of Chief Police Officers (Scotland)	Mr H Clark
British Veterinary Association	Miss S Henderson Mr F Nind
Convention of Scottish Local Authorities	Mrs D M Henwood Mr D C Russell
Joint Advisory Committee on Pets in Society	Mr A Chevis Mr L Leather
National Farmers Union of Scotland	Mr R Lamont
Research Scientist	Dr M Baxter
Royal Environmental Health Institute of Scotland	Mr D Watson Mr J Stirling
Scottish Kennel Club	Mr A Sim
Scottish Landowners Federation	Mr P MacDonald
Scottish Society for the Prevention of Cruelty to Animals	Mr R Mochrie

APPENDIX B

GROUPS . TERMS OF REFERENCE

WORKING GROUP ON DOGS

TERMS OF REFERENCE

The Working Group's terms of reference were as follows:-

1. To consider and advise on how best to implement the proposals set out in the "Action on Dogs" consultation paper.
2. To investigate measures for the better enforcement of the existing law relating to dogs.
3. To investigate other measures which would help strengthen the existing law relating to dogs including particularly:-
 - 3.1 measures to reduce the incidence of attacks by dangerous dogs;
 - 3.2 measures to reduce the incidence of dog fouling in public places; and
 - 3.3 measures to reduce the incidence of stray and abandoned dogs.
4. To investigate other measures in relation to dogs which would be in the interests both of the public and of the dogs.
5. To produce a report of their conclusions by December 1990 or earlier for consideration by Scottish Office Ministers.

APPENDIX C

TABLE 1 - ANALYSIS OF LOCAL AUTHORITIES
DOG CONTROL SERVICES

TABLE 2 - BREAKDOWN OF DOG CONTROL
SERVICES BY DISTRICT

SCOTTISH WORKING GROUP ON DOGS

RESPONSES TO COSLA QUESTIONNAIRE - ANALYSIS OF LOCAL
AUTHORITIES DOG CONTROL SERVICESNumber of questionnaires issued 56Number returned 541. Number of District Councils employing dog wardens:-

No of Council Responses	Yes	No	Total No of Wardens	
			Full-time	Part-time
54	34	20	46	11

1.1 Other dog control measures employed:-

1.1.1 Several authorities use Management Rules to counteract the problem and a number are considering making appropriate bye-laws.

2. Dog Fouling

No of Council Responses	Problem/ Yes	Serious Problem	Manageable	No Problem
54	51	26	25	3

2.1 Measures undertaken to control fouling problem

2.1.1 Anti-dog fouling notices highlighting the offence of fouling under Section 48 of the Civic Government [Scotland] Act 1982.

2.1.2 Use of dog repellent in problem areas as a deterrent.

2.1.3 Dog waste bins provided in areas where dogs are allowed.

2.1.4 Poop scoops provided by several authorities and information packs issued to the public in an effort to impress upon the need to remove dog faeces.

(table 1 continued)

2.1.5 Persistent cases of dog fouling reported to police in order that they may consider investigating complaints.

3. Straying:-

No of Council Responses	Problem/ Yes	Serious Problem	Manageable	No Problem
54	41	6	35	13

3.1 Measures undertaken to control problem of straying:-

3.1.1 Those who employ dog wardens cite their activities as the main source of tackling the stray problem.

3.1.2 Authorities who do not use a dog warden service point to their police as their means of controlling the situation.

3.1.3 The problem of straying is included in any publicity campaigns undertaken by authorities.

4. Number of strays collected 1989-90:-

No of Council Responses	Number of Strays Collected	Returned to Owners	Found New Homes	Destroyed
54	13,767*	7,353	2,083	4,331

***Number of strays collected will be higher than this figure. Some authorities made no return.**

5. Public education programmes to promote responsible dog ownership:-

No of Councils responses	Programmes	
	Yes	No
54	34*	20

*All authorities who employ dog wardens also undertake education programmes.

(table 1 continued)

5.1 Programmes entail:-

5.1.1 Various campaigns to educate dog owners of their responsibilities "Kerb your Dog", "Dog Training", "Keep it Clean" are some of the titles.

5.1.2 Use of videos, slides, handouts, competitions, training classes and demonstrations in schools and community groups. Where dog wardens are employed they would attend these meetings normally taking their dog along.

5.1.3 Local press publicity coupled with posters, stickers, distribution of literature etc.

6. Annual costs of councils' dog control measures:-

No of Council	Capital	Current
54	£38,000	£900,000

COSLA QUESTIONNAIRE - BREAKDOWN BY DISTRICT

District Council	No of Dog Wardens Employed	Fouling a Problem				Straying a Problem				Educational Activities Undertaken
		Yes		No		Yes		No		
		Manageable	Serious	Manageable	Serious	Manageable	Serious	Manageable	Serious	
1. Aberdeen	2		*		*		*		*	Yes
2. Angus	2		*		*		*		*	Yes
3. Annandale and Eskdale	Nil	*				*			*	Nil
4. Argyll and Bute	Nil	*				*			*	Nil
5. Badenoch and Strathspey	Nil	*				*			*	Nil
6. Banff and Buchan	2	*				*			*	Yes
7. Bearsden and Milngavie	1 (Part-time)	*				*			*	Yes
8. Berwickshire	Nil		*				*		*	Nil
9. Caithness	Nil	*				*			*	Nil
10. Clackmannan	1		*				*		*	Yes
11. Clydebank	2	*				*			*	Yes
12. Clydesdale	Nil		*				*		*	Nil
13. Cumbernauld and Kilsyth	1 (Part-time)		*				*		*	Yes
14. Cummock and Doon Valley	Nil	*					*		*	Nil
15. Cunningham	1 (Part-time)		*				*		*	Yes
16. Dumbarton	2		*				*		*	Yes
17. Dundee	2		*				*		*	Yes
18. Dunfermline	Nil	*					*		*	Nil
19. East Kilbride	1	*					*		*	Yes

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(table 2 continued)

District Council	No of Dog Wardens Employed	Fouling a Problem		Straying a Problem		Educational Activities Undertaken
		Manageable	Serious	Manageable	Serious	
20. East Lothian	2 (Part-time)		*	*		Yes
21. Eastwood	1		*		*	Yes
22. Edinburgh	7		*		*	Yes
23. Ettrick and Lauderdale	Nil		*		*	Nil
24. Falkirk	2	*		*		Yes
25. Glasgow	2	*		*		Yes
26. Gordon	1		*		*	Yes
27. Hamilton	1 (Part-time)	*		*		Yes
28. Inverclyde	1		*	*		Yes
29. Inverness	1	*			*	Yes
30. Kilmarnock	2 (Part-time)	*		*		Yes
31. Kincardine and Deeside	1	*		*		Yes
32. Kirkcaldy	2	*		*		Yes
33. Kyle and Carrick	3		*		*	Yes
34. Midlothian	2 (1 Part-time)		*		*	Yes
35. Monklands	2	*		*		Yes
36. Moray	1		*		*	Yes
37. Motherwell	2	*		*		Yes
38. Nairn	Nil		*		*	Nil

(table 2 continued)

District Council	No of Dog Wardens Employed	Fouling a Problem		Straying a Problem		Educational Activities Undertaken
		Manageable	Serious	Manageable	Serious	
39. Nithsdale	Nil		*	*		Nil
40. North East Fife	1	*		*		Yes
41. Orkney	Nil	*		*		Nil
42. Perth and Kinross	1		*	*		Yes
43. Renfrew	1		*	*		Yes
44. Roxburgh	Nil	*			*	Nil
45. Shetland	Nil		*			Nil
46. Skye and Lochalsh	Nil	*			*	Nil
47. Stewartry	Nil					Nil
48. Stirling	1	*		*		Yes
49. Strathkelvin	1		*	*		Yes
50. Sutherland	Nil			*	*	Nil
51. Tweeddale	Nil		*	*		Nil
52. West Lothian	2 (Part-time)		*	*		Yes
53. Western Isles	Nil			*	*	Nil
54. Wigtown	Nil	*		*		Nil

APPENDIX D

CURRENT STATUTES RELATING TO
DOGS AND GROUP'S RECOMMENDED
AMENDMENTS

APPENDIX D

CURRENT STATUTES RELATING TO DOGS AND WORKING GROUP'S
RECOMMENDED AMENDMENTS

1. Dogs Act 1871 (as amended by the Dogs Amendment Act 1938 and the Dangerous Dogs Act 1989)

Empowers magistrates to order the destruction of dangerous dogs or order that they be kept under proper control. The Dangerous Dogs Act 1989 extends the powers available under the 1871 Act and introduces a new power to make a Disqualification Order. This legislation refers to "owner" unlike the other dog related statutes which provide for a definition of the dogs keeper. Under this legislation therefore the dogs owner is responsible if it attacks someone. This is not equitable or reasonable.

Recommendation

The Group recommend that the Act should be amended to provide for "keeper" rather than "owner" and to provide a definition of keeper.

2. Dogs Act 1906 (as amended by the Sections 128 of Civic Government (Scotland) Act 1982)

Under the legislation, both a police constable and a "proper officer" of a district or islands council have powers to seize and detain stray dogs and to dispose of them if they are not claimed within 7 days.

Recommendation

The Group's view that both police constables and proper officers should have express duties to deal with strays has now been taken account of in the recently enacted Environmental Protection Act 1990

3. Protection of Animals (Scotland) Act 1912

Makes it an offence to cause unnecessary suffering to any domestic or captive animal.

Recommendation

No change to the legislation.

4. Control of Dogs Order 1930 (made under powers consolidated in the Animal Health Act 1981)

Requires dogs to wear identity discs bearing the name and address of their owner when in a public place and enables local authorities to make curfew regulations to control dogs.

Recommendation

5. Pet Animals Act 1951

The provisions of the legislation are quite adequate and have been strengthened by new powers for local authorities under the Environmental Protection Act 1990.

Provides for the inspection and licensing by local authorities of pet shops and the attachment of conditions to the licence.

Recommendation

6. Dog (Protection of Livestock) Act 1953

No change to legislation.

Makes it an offence to allow a dog to worry livestock.

Recommendation

7. Animal Boarding Establishments Act 1963

No change but the Group were of the view that this legislation would be more effective if owners were required to hold third party insurance (see paras 4.15 and 4.16).

Provides for the inspection and licensing of boarding establishments for dogs and cats by local authorities and for the attachment of conditions to the license.

Recommendation

8. Breeding of Dogs Act 1973

No change to legislation.

Provides for the inspection and licensing by local authorities of dog breeding establishments and for the attachment of conditions to the license.

Recommendation

9. Rabies Control Order 1974

The Group recommend that the definition of breeding establishment be amended and that local authority officers be given additional powers to enter and inspect breeding establishments (see paras 4.22 and 4.23).

Provides for special controls or destruction of animals in infected areas.

Recommendation

10. Guard Dogs Act 1975

No change to legislation.

Lays down requirements for the supervision of guard dogs and the licensing of guard dog kennels.

Recommendation

11. Animal Health Act 1981

No change to legislation but consideration should be given to bringing in the remaining provisions thus ensuring that a person could not keep a dog at guard dog kennels unless he held a licence to do so.

Consolidates powers in Control or Dogs Orders.

Recommendation

12. Roads (Scotland) Act 1984

No change to legislation.

Empowers the road authority of the police to seize and detain any animal which is left on, or allowed to stray onto, a road other than at a place where the road is running through unenclosed countryside. Makes it an offence for a person to leave an animal on, or allowing it to stray onto such road (Level 3 penalty).

Recommendation

13. Civic Government (Scotland) Act 1982

No change to the legislation.

Makes it an offence to allow a dog to foul certain public places. Makes it an offence for the person in charge of a creature to suffer or permit it to cause danger, injury, or give reasonable cause for alarm and annoyance to another person. Provision for District Courts to order steps to be taken to prevent continuance of the nuisance and whether or not the court convicts the owner they may seize and dispose of the creatures.

Recommendation

14. Animals (Scotland) Act 1987

That section 48 (fouling) be amended to provide for the "poop scoop" principle to apply in all public places and that the level of fines in section 49 (dangerous and annoying creatures) be increased during the forthcoming review of the 1982 Act.

Imposes strict liability for injury or damage caused by dogs and provides a defence in civil proceedings on death or injury to dogs if the act was in self defence or for the protection of another person or livestock.

Recommendation

15. Protection of Animals
(Amendment) Act 1988

No change to the legislation.

Enables a court to disqualify a person from having custody of an animal on a first conviction of cruelty and to increase the penalties in relation to dog fights and to penalise attendance at such fights.

Recommendation

16. Road Traffic Act 1988

No change to the legislation.

Makes it an offence to allow a dog to be on a designated road without being held on a lead. The regulations prescribing the procedure involved in designation are contained in The Control of Dogs on Roads Order (Procedure) (Scotland) Regulations 1962.

Recommendation

17. Dangerous Dogs Act 1989

The Group recommend that section 27 of the 1988 Act be repealed so as to open the way for primary legislation or district councils to make byelaws requiring dogs to be held on leads in all public places.

Extends the powers available under the Dogs Act 1871 including enhanced penalties for offences.

Recommendation

18. Environmental Protection
Act 1990

The Group recommend that the legislation should provide for "keeper" rather than "owner" and that the term "keeper" should be defined. They also recommend that orders made under this legislation should extend to the whole household rather than just the "owner" or "keeper".

Places a statutory duty on local authorities to collect faeces in the same way as other litter.

Also places an express duty on the authorities to collect and dispose of stray dogs.

Recommendation

No change to legislation.

APPENDIX E

MODEL DOG CONTROL BYELAWS AND ASSOCIATED GUIDANCE

CHAPTER 1: GENERAL PRINCIPLES OF BYELAWS

1.1 For the benefit of those who may be unfamiliar with the preparation of byelaws, this chapter defines what is meant by byelaws and the legal provisions under which dog control byelaws are made and confirmed.

Definition of Byelaw

1.2 A local authority byelaw is a form of secondary legislation and may be defined as a law which operates within the area of the authority, having been made by the authority under a power conferred by statute and confirmed by the confirming authority, usually the Secretary of State.

1.3 Byelaws may create offences and proceedings against offenders are normally taken summarily in either district or sheriff courts.

Statutory Authority for Dog Control Byelaws

1.4 The statutory provisions under which local authorities may make byelaws to control dog nuisances are sections 201, 202 and 203 of the Local Government (Scotland) Act 1973 (the 1973 Act) and section 121 of the Civic Government (Scotland) Act 1982 (the 1982 Act), reproduced at Appendices C and D respectively.

1.5 Section 201 of the 1973 Act empowers local authorities to make byelaws for good rule and government and for the prevention and suppression of nuisances in their respective areas. However, this power cannot be used to make byelaws for a matter which is provided for elsewhere. Thus local authorities cannot use the 1973 Act to require dogs to be held on leads on roads because section 27 of the Road Traffic Act 1988 provides separately for this.

1.6 Section 121 of the 1982 Act empowers district and islands councils to make byelaws relating to activities on the seashore, adjacent waters and inland waters. The byelaw making power is subject to the consent of proprietors and lessees. The section applies to the seashore to which the public have access as of right. It allows byelaws to be made where this is necessary to prevent nuisance or danger or to preserve and improve the amenity on the seashore. Byelaws made under this section may control trade or business carried out on the seashore, the use of vehicles on the seashore and the exercise of sporting and recreational activities.

1.7 Because section 48 of the 1982 Act provides largely for the control of dog fouling no model fouling byelaws have been produced. However, it is recognised that this provision has proved largely ineffective and the Government, therefore, propose to amend the section, when a suitable legislative opportunity arises, to provide for the "poop scoop" principle. The Government consider that it is more appropriate to control fouling by way of primary legislation rather than by way of byelaws.

Role of the Secretary of State

1.8 Byelaws made under the 1973 and 1982 Acts must be confirmed by the Secretary of State before they can come into operation. In

considering applications made to him the concern of the Secretary of State is, not least, to ensure that the byelaws are necessary and valid.

Validity of Byelaws

1.9 To be valid byelaws must satisfy the following criteria. Firstly, they must be *intra vires*, that is within the powers granted by the enabling legislation; secondly, they must not be repugnant to the general law; thirdly, they must be certain and reasonable; and fourthly, the prescribed statutory procedure for making them must have been followed.

1.10 A byelaw may be found to be unreasonable if it is discriminatory and unequal, manifestly unjust or unjustifiably interferes with individual rights. In this connection the Secretary of State, as confirming authority, needs to be satisfied as to both the byelaws' legality and to the byelaws' expediency.

1.11 Because byelaws create offences, albeit of local effect, the Secretary of State takes the view that the law should not be extended in this way unless there is evidence of need in the locality in which they will apply. Furthermore, the Secretary of State believes that a local authority should not contemplate making any byelaw unless they are satisfied that it can and will be enforced, otherwise the law will fail to command respect. In this respect local authorities are advised to consult the Chief Constable and the Procurator Fiscal of their area on their proposals at an early stage.

Judicial Scrutiny

1.12 A byelaw may be subject to judicial scrutiny in two ways; firstly, during a prosecution if the accused seeks to challenge its validity and secondly, by anyone with title and interest to pursue the matter by way of judicial review.

Model Byelaws

1.13 To assist local authorities in preparing their proposals Government Departments sometimes issue model schemes of byelaws. The advantage of adopting the model schemes is that they provide for greater uniformity in the law and for that reason Departments are usually reluctant to approve deviations from the model wording unless authorities can demonstrate reasons to the contrary. Also model schemes have usually been developed in consultation with those who have practical experience of the particular matters which they are designed to address.

Application of Principles to Dog Control Byelaws

1.14 The starting point for Scottish Office policy in this area is the duty of the Secretary of State, when confirming byelaws, to satisfy himself that any proposal is reasonable, bearing in mind the interests of the community as a whole and ensuring that one section is not discriminated against unfairly. Because dog owners form a substantial part of the population, it is only right that they should be allowed reasonable facilities to exercise their dogs, especially in urban areas. But in the same way that owners should have facilities

for their dogs, other people should be able to enjoy public places free from the nuisances which dogs can cause, without having to plead special needs. Where this balance will lie in any local area will depend on a variety of factors and it is not possible to provide a blue print for universal adoption. But, by taking into account the needs of both sections and by considering the criteria which have been established for the model byelaws described in the next chapter, it is hoped that local authorities will be able to develop schemes which will command public respect and create a more pleasant environment.

CHAPTER 2: MODEL BYELAWS

2.1 This chapter outlines the model byelaws available for adoption by local authorities.

THE CONTROL OF DOGS IN PLACES OTHER THAN ON THE SEASHORE

2.2 These byelaws, reproduced at Annex A, provide for two aspects of dog control; firstly a requirement that dogs should be held on leads in certain areas and secondly the prohibition of dogs from certain sensitive areas. Although both aspects are provided for in a single document it is open to a local authority to adopt one or both if it so wishes.

Dogs on Leads

2.3 This provision allows local authorities the opportunity to require dogs to be held on leads in certain areas.

2.4 It is intended that this byelaw would extend to areas used by the public for sporting, leisure and recreational purposes. In the byelaws these areas are referred to as the restricted area. **However, these areas cannot include the seashore, for which separate model byelaws are provided, nor can they include a road (including a pavement) within the meaning of the Roads (Scotland) Act 1984. Separate statutory provision for the control of dogs on roads is provided for under section 27 of the Road Traffic Act 1988.**

2.5 When considering a dogs on leads byelaw, local authorities should take into account the health and welfare of dogs. An important aspect of dog welfare is that they should receive sufficient exercise. In this respect it is important that adequate and appropriate provision should be made so that dogs can be exercised off the lead. Local authorities should take care to ensure that exercise areas are of sufficient size, that they are safe and that dogs cannot easily escape from them into areas where they are either required to be kept on a lead or indeed banned altogether. In considering an application for confirmation, particular attention will be given to the provision of such areas. A byelaw which makes no provision, or unreasonable or unsuitable provision, is unlikely to be confirmed.

Dogs Prohibited from Certain Areas

2.6 The provision prohibiting dogs from certain areas gives local authorities the opportunity to ban dogs from certain sensitive areas such as children's play areas and ornamental gardens.

2.7 In considering an application for confirmation the Secretary of State will pay particular attention to an authority's reasons for promoting a dog ban. In this respect it is important that the authority supply a detailed statement in support of their proposal.

The Role of District and Regional Councils

2.8 Although regional councils are empowered to make dog control byelaws the Secretary of State wishes to discourage this for reasons of efficiency. As an alternative District Councils should, at an early

stage, consult with the appropriate regional council in order to ascertain whether the proposed byelaw should apply to any specific area or areas under the direct control of the Regional Council, eg school playgrounds and school sports fields. In this way the Regional Council's interests can be met without the Regional Council promoting separate byelaws.

THE CONTROL OF DOGS ON THE SEASHORE

2.9 Section 121 of the Civic Government (Scotland) Act 1982 as read with sections 201, 202 and 203 of the Local Government (Scotland) Act 1973 provides district and islands councils with the statutory authority to make byelaws for the control of dogs on the seashore.

2.10 The model byelaws, reproduced at Annex B, again provide district and islands councils with an opportunity to require dogs to be held on leads on certain parts of the seashore and to prohibit dogs from other areas of the seashore.

Dogs on Leads

2.11 Because the Secretary of State expects dog owners to have a share in the pleasanter parts of the seashore and to be able to enjoy facilities such as beach chalets, refreshments and entertainments local authorities are expected to use the dogs on leads provisions as the only form of dog control in these areas.

Dogs prohibited from Certain Areas

2.12 This provision may be seen as a response to public demand, especially from parents, for beaches which are clear of dog faeces and where young children can play without being frightened by dogs.

2.13 Local authorities should take care when considering the areas of the seashore to which this provision should apply and should take into account a number of factors such as ease of access for parents with young children and the proximity of facilities. In addition, in order to prevent dogs from straying into prohibited parts of the seashore and because it is impracticable to physically enclose them, the Secretary of State would normally expect these areas to be bounded by areas where the dogs on leads provision applies.

2.14 Because many dog owners like to use beaches the Secretary of State is not prepared to allow byelaws prohibiting dogs from all beaches within a district or islands area, or the entire beach where there is only one.

PENALTIES

2.15 Section 203 of the 1973 Act and section 121 of the 1982 Act provide for a maximum penalty, on summary conviction, of a fine of level 2 on the standard scale (currently £100).

PUBLIC AWARENESS

2.16 In order that the public are fully aware of the effects of the byelaws as they apply to particular areas, each set includes a

requirement that their effect is displayed by one or more signs placed at or near the areas to which they apply. It is for authorities themselves to decide how best to convey this information.

EXEMPTIONS

2.17 Certain categories of person are exempt from the effect of both sets of byelaws.

2.18 In the interests of public order and safety police constables, officers of Her Majesty's Customs and Excise and members of Her Majesty's Armed Forces who are in charge of dogs in pursuance of their duties are exempted. Similarly any person who is in charge of a dog being used solely for rescue purposes is exempted as is a stock person in charge of a dog being used for droving livestock (there may be occasions when it is necessary to use a working dog to remove livestock which have escaped into a restricted or prohibited area).

2.19 A blind person in charge of a dog used solely for his guidance is exempted from the effect of the byelaws prohibiting dogs to be in certain areas and certain areas of the seashore. Without such an exemption the blind would effectively be prohibited from using these areas. This is clearly unjust.

2.20 The Secretary of State is prepared to consider the inclusion of other categories of person in the exemption provisions. Local authorities wishing to widen the exempt categories should indicate which categories they wish to see included in the exemption provisions and supply a statement in support of their proposals.

CHAPTER 3: PROCEDURAL GUIDANCE

3.1 This chapter outlines the steps to be taken by local authorities who wish to adopt the model byelaws described in the previous chapter.

Preliminary Stages

3.2 It is impossible to over-estimate the importance of effective planning and consultation in the making of dog control byelaws. As a preliminary authorities should seek the views of dog owners and animal welfare organisations on how byelaws might be introduced. For example they may form part of a joint strategy to promote responsible dog ownership. Experience in England and Wales has shown that dog owners are much more likely to comply with byelaws in such circumstances. In addition it is important that at an early stage the enforcement agencies, the Police and the Procurator Fiscal, are made aware of an authority's proposals in order that they can express their views on the enforcement aspects of the proposals. Also the appropriate regional council should be consulted at an early stage (see para 2.8).

Statutory Requirements

3.3 Sections 202-203 of the 1973 Act prescribe a set of procedures and penalties which apply to all local authority byelaws except those for which other statutory procedures and penalties are prescribed. The sections of the 1973 Act are reproduced in Annex C. Sections 120 and 121 of the 1982 Act provide *inter alia* further procedures which have to be followed for byelaws relating to the seashore, in particular seeking and obtaining the consent of all persons having a proprietorial interest in the seashore. The relevant sections of the 1982 Act are reproduced at Annex D.

Revocation of Old Byelaws

3.4 In preparing new byelaws for areas already subject to byelaws, care should be taken to identify any byelaws which will become redundant or would conflict with the new byelaws. Section 202C of the 1973 Act allows local authorities to revoke byelaws by resolution.

Provisional Approval of Byelaws

3.5 Although it is not a statutory requirement, local authorities are strongly advised to submit their proposals to the Scottish Office Environment Department in draft before they are formally adopted or published. In this way, any necessary adjustments can be made to byelaws before an authority has incurred the expense and delay of advertising them. Applications should be addressed to:-

Scottish Office Environment Department
Local Government Division
Room 4/91
New St Andrew's House
EDINBURGH
EH1 3SZ

Supporting Documents

3.6 Applications for dogs on leads byelaws and dog ban byelaws should be accompanied by a map of a reasonable scale in which the following areas are hatched in the colours indicated:-

dogs on leads (restricted areas) in blue

dog ban areas (prohibited areas) in red

A detailed statement in support of the authority's proposals should also accompany the application.

3.7 Applications for dog ban byelaws which would apply to the seashore should be accompanied by a reasonably large scale map of the seashore of the district in which the prohibited areas is hatched in red and the restricted area in blue. The map should also be annotated to indicate the amenities for example sand, beach chalets, refreshments and entertainments available in each area.

The Making of Byelaws

3.8 When the draft byelaws have been approved provisionally and the Council has formally resolved to adopt them, section 202(3) of the 1973 Act requires that they should be made under the common seal of the authority and signed by the proper officer of the authority. Two sealed documents are required to be submitted to the Department.

Advertisement of Byelaws

3.9 Section 202(4) of the 1973 Act requires an authority to give in one or more newspapers circulating in the authority's area, at least one month before application for confirmation of the byelaws, notice of the intention to apply for confirmation, of the place where a copy of the byelaws may be inspected and of the authority to whom objections may be notified.

3.10 Section 202(5) of the 1973 Act requires that for at least one month after the date of publication of the newspaper containing the notice a copy of the byelaws must be deposited at the offices of the authority for inspection by the public at all reasonable hours.

3.11 The following is an example of a newspaper notice:-

[] DISTRICT/ISLANDS COUNCIL

CONFIRMATION OF BYELAWS

"Notice is hereby given that the [] District/Islands Council intend after the expiry of the period mentioned below to apply to the Secretary of State for confirmation of byelaws made by the Council [here insert a description of the byelaws].

Copies of the byelaws will be kept at the office of the Council at and will be open to inspection without payment on any weekday during the usual office hours for one calendar month from and after the date of the (first) publication of this notice. Copies of the byelaws will also be

supplied on receipt of an application accompanied by a fee of
..... for each copy.

Any objection to the confirmation of the byelaws may be made by letter addressed to the Secretary, Scottish Office Environment Department, Local Government Division, Room 4/91, New St Andrew's House, Edinburgh, EH1 3SZ before the byelaws are confirmed.

(Signed) Proper Officer of the Council

(Insert date of signature) 19 .."

3.12 It is sometimes overlooked that it is "a copy of the byelaws" which by virtue of subsection 202(5) which has to be deposited. Deposit can, therefore, not begin effectively until the byelaws have been brought into existence by being sealed.

3.13 Section 202(6) of the 1973 Act requires the council to furnish to any person, on application, a copy of the byelaws or any part thereof on payment of such sum not exceeding 10p for every hundred words contained in the copy as the council may determine.

Application for Confirmation

3.14 The application for confirmation should not be made until the month of deposit has expired and should be accompanied by two sealed copies of the byelaws and a copy or copies of the newspaper or newspapers containing the notice of intention to apply for confirmation. The application should also include a statement that a copy of the byelaws as forwarded for confirmation had been deposited for inspection for a full calendar month after the date of first publication of the newspaper/newspapers.

3.15 Sufficient space should be provided at the end of the byelaws document in order that they can be confirmed with our without modification.

3.16 On receipt of the sealed byelaws, provided that they correspond with those for which provisional approval has already been given and no objections have been received, they will normally be confirmed and returned to the local authority within three weeks. Where major objections have been received copies of them will be forwarded to the local authority for their comments before any decision is taken on whether the byelaws should be confirmed. In contentious cases, particularly those where the arguments are finely balanced, it is open to the Secretary of State under section 202(8) of the 1973 Act to hold a local inquiry or cause a local inquiry to be held. It is quite rare for inquiries to be held into byelaws' applications and in the normal course the Secretary of State would hope that the issues, and any scope for compromise, might be determined by discussion locally between the council and the objectors.

Applications for Dog Byelaws in 1991

3.17 Many local authorities may wish to adopt dog byelaws following the publication of SOEn Circular [] and this booklet. The Scottish Office Environment Department will do its best to process applications quickly. However, it will help greatly to reduce delays if local authorities do not link any applications for dog byelaws to a wider existing series of byelaws for the ground or area to be regulated, nor take the opportunity to amend any byelaws for penalties in an existing series, other than to revoke a particular byelaw. When a local authority submits amending byelaws it is frequently found that the older series contains byelaws which are superfluous or do not comply with current policy, and the handling of the application is time-consuming and leads to delays.

MODEL BYELAWS

DISTRICT/ISLANDS COUNCIL (DOG CONTROL) (GENERAL) BYELAWS

The District/Islands Council in exercise of the powers conferred on them by sections 201, 202 and 203 of the Local Government (Scotland) Act 1973(a) and of all other powers enabling them on that behalf, hereby make the following byelaws:-

CITATION AND COMMENCEMENT

1. (1) These byelaws may be cited as the District/Islands (Dog Control) (General) Byelaws 19

(2) These byelaws shall come into operation at the expiration of one month from the date of their confirmation.

INTERPRETATION

2 (1) In these byelaws, except where the context otherwise requires -

"Council" means the District/Islands Council

"prohibited area" means any area specified in Schedule 1 to these byelaws;

"restricted area" means any area specified in Schedule 2 to these byelaws.

(2) Any reference in these byelaws to a numbered byelaw is a reference to the byelaw bearing that number in these byelaws.

PUBLIC NOTICES OF EFFECT

3. Notice of the effect of these byelaws shall be given by one or more signs placed by the Council at, or reasonably adjacent to, any restricted area and any prohibited area.

OFFENCES

4. Subject to byelaw 8, any person who causes or permits a dog to enter or remain within a restricted area, without the dog being held on a lead, shall be guilty of an offence.

5. Subject to byelaws 8 and 9, any person who causes or permits a dog to enter a prohibited area shall be guilty of an offence.

(a)1973 c.30

6. In proceedings against a person for an offence under byelaw 4 and byelaw 5, it shall be no defence that at the time at which the offence allegedly occurred, no sign was erected at or reasonably adjacent to the restricted or prohibited area at which the offence allegedly occurred.

PENALTY

7. Any person who commits an offence under byelaw 4 or byelaw 5 shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

EXTENT

8. Byelaws 4 and 5 shall not apply:-

(1) to a police constable, to an officer of Her Majesty's Customs and Excise, or to a member of Her Majesty's Armed Forces, in charge of a dog in pursuance of his duties,

(2) to a stock person in charge of a dog being used for droving livestock, or

(3) to a person in charge of a dog being used solely for rescue purposes.

9. Byelaw 5 shall not apply to a blind person in charge of a dog kept and used solely for his guidance.

SCHEDULE 1

Prohibited Area

[The area [known as] [bounded by] and extending to []
[hectares/square metres] shown delineated in red on the plans annexed
and signed as relative hereto].

SCHEDULE 2

Restricted Area

[The area [known as] [bounded by] and extending to []
[hectares/square metres] shown delineated in blue on the plans annexed
and signed as relative hereto].

MODEL BYELAWS

DISTRICT/ISLANDS COUNCIL (DOG CONTROL) (SEASHORE) BYELAWS

The District/Islands Council in exercise of the powers conferred on them by section 121 of the Civic Government (Scotland) Act 1982(a) and sections 201, 202 and 203 of the Local Government (Scotland) Act 1973(b) and of all other powers enabling them on that behalf, hereby make the following byelaws:-

CITATION AND COMMENCEMENT

1. (1) These byelaws may be cited as the District/Islands (Dog Control) (Seashore) Byelaws 19

(2) These byelaws shall come into operation at the expiration of one month from the date of their confirmation.

INTERPRETATION

2. (1) In these byelaws, except where the context otherwise requires -

"Council" means the District/Islands Council

"prohibited area" means any area specified in Schedule 1 to these byelaws;

"restricted area" means any area specified in Schedule 2 to these byelaws;

"the seashore" has the same meaning as in section 123 of the Civic Government (Scotland) Act 1982(a).

(2) Any reference in these byelaws to a numbered byelaw is a reference to the byelaw bearing that number in these byelaws.

PUBLIC NOTICES OF EFFECT

3. Notice of the effect of these byelaws shall be given by one or more signs placed by the Council at, or reasonably adjacent to any restricted area and any prohibited area

(a)1982 c.45

(b)1973 c.30

OFFENCES

4. Subject to byelaw 8, any person who causes or permits a dog to enter or remain within a restricted area, without the dog being held on a lead, shall be guilty of an offence.
5. Subject to byelaws 8 and 9 any person who causes or permits a dog to enter a prohibited area shall be guilty of an offence.
6. In proceedings against a person for an offence under byelaw 4 and byelaw 5, it shall be no defence that at the time at which the offence allegedly occurred no sign was erected at or reasonably adjacent to the restricted or prohibited area at which the offence allegedly occurred.

PENALTY

7. Any person who commits an offence under byelaw 4 or byelaw 5 shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

EXTENT

8. Byelaws 4 and 5 shall not apply:-
 - (1) to a police constable, to an officer of Her Majesty's Customs and Excise, or to a member of Her Majesty's Armed Forces, in charge of a dog in pursuance of his duties,
 - (2) to a stock person in charge of a dog being used for droving livestock, or
 - (3) to a person in charge of a dog being used solely for rescue purposes.
9. Byelaw 5 shall not apply to a blind person in charge of a dog kept and used solely for his guidance.

SCHEDULE 1

Prohibited Area

[That area of the seashore from [] to [] [bounded by
.....] and extending to [] [hectares/square metres] shown
delineated in red on the plans annexed and signed as relative hereto].

SCHEDULE 2

Restricted Area

[That area of the seashore from [] to [] [bounded by
.....] and extending to [] [hectares/square metres] shown
delineated in blue on the plans annexed and signed as relative hereto].

LOCAL GOVERNMENT (SCOTLAND) ACT 1973 (c. 65)
Part XI, ss. 201, 202

Byelaws

201. (1) A local authority may make byelaws for the good rule and Byelaws for good government of the whole or any part of the region, islands area or district, as rule and the case may be, and for the prevention and suppression of nuisances therein. government.

(2) The confirming authority in relation to byelaws made under this section shall be the Secretary of State.

(3) Byelaws shall not be made under this section for any purpose as respects any area if provision for that purpose as respects that area is made by, or is or may be made under, any other enactment.

S. 201(1) extended by Civic Government (Scotland) Act 1982 (c.45), s. 112(3)

S. 201(3) excluded by Civic Government (Scotland) Act 1982 (c. 45), s. 112(3)

202. (1) [1Subject to subsection (1A) below] the following provisions of this Procedure, etc., for section shall apply to byelaws to be made by a local authority— byelaws.

(a) under this Act,

(b) under any other enactment whenever passed, and whether local or otherwise, conferring on a local authority a power to make byelaws, or

(c) under any enactment which incorporates or applies any of the following enactments—

(i) section 57 of the Local Government (Scotland) Act 1889; 1889 c. 50.

[2(ii) the Civic Government (Scotland) Act 1982;] 1982 c. 45.

(iii) sections 183 to 187 of the Public Health (Scotland) Act 1897; 1897 c. 38.

(iv) sections 301 to 303 of the 1947 Act.

[3(1A) This section shall not apply to byelaws made under section [470 or 71] of the Water (Scotland) Act [51980] or section 63(7) of the Countryside 1980 c. 45. (Scotland) Act 1967.] 1967 c. 86.

(2) Unless the enactment under which the byelaws are made specifically provides otherwise, any such byelaws may apply only to a part of the area of a local authority, and different byelaws may apply to different parts of the area.

¹Words inserted by Local Government (Scotland) Act 1975 (c. 30), Sch. 6 Pt. II para. 53(a)

²S. 202(1)(c)(ii) substituted by Civic Government (Scotland) Act 1982 (c. 45), s. 110(1)(2)(a)

³S. 202(1A) added by Local Government (Scotland) Act 1975 (c. 30), Sch. 6 Pt. II para. 53(b)

⁴Words substituted by Water (Scotland) Act 1980 (c. 45), Sch. 10 Pt. II

⁵Words substituted by Water (Scotland) Act 1980 (c. 45), Sch. 10 Pt. 11

(3) The byelaws shall be authenticated by being sealed with the common seal of the local authority and signed by the proper officer of the authority, and shall not have effect until they are confirmed by the confirming authority.

(4) At least one month before application for confirmation of the byelaws is made, notice of the intention to apply for confirmation, of the place where a copy of the byelaws may be inspected and of the authority to whom objections may be notified shall be given in a newspaper circulating in the area to which the byelaws are to apply or in such other manner as the confirming authority on the application of the local authority may determine to be sufficient in the circumstances.

(5) For at least one month before application for confirmation is made, a copy of the byelaws shall be deposited at the offices of the local authority by whom the byelaws are made and shall at all reasonable hours be open to public inspection without payment.

(6) The local authority by whom the byelaws are made shall on application furnish to any person a copy of the byelaws or of any part thereof on payment of such sum, not exceeding 10p for every hundred words contained in the copy, as the authority may determine.

(7) Any person aggrieved by any byelaws may, within one month after notice has been published in accordance with the provisions of subsection (4) above, notify in writing his objection and the ground of his objection to the confirming authority.

(8) Before confirming byelaws, the confirming authority shall take into consideration any objections received by them and may, if they consider it necessary or desirable, hold a local inquiry or cause a local inquiry to be held.

1982 c. 45.

(9) Unless the Secretary of State shall otherwise direct, every inquiry with respect to byelaws made under any provision of this Act or of the [1Civic Government (Scotland) Act 1982] shall be held by the sheriff.

(10) The confirming authority may confirm with or without modification or refuse to confirm any byelaws submitted under this section for confirmation and may fix the date on which the byelaws are to come into operation, and if no date is so fixed the byelaws shall come into operation at the expiration of one month from the date of their confirmation.

(11) The local authority shall, as soon as practicable after receiving intimation of the confirmation of the byelaws by the confirming authority, cause a notice of such confirmation, of the date on which the byelaws are to come into operation, and of the place where a copy of the byelaws as confirmed may be inspected, to be given in a newspaper circulating in the area to which the byelaws are to apply or in such other manner as the confirming authority on the application of the local authority may determine to be sufficient in the circumstances.

¹Words substituted by Civic Government (Scotland) Act 1982 (c. 45), s. 110(1)(2)(b)

(12) A copy of the byelaws when confirmed shall be printed and deposited at the offices of the local authority by whom the byelaws are made and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall on application be furnished to any person on payment of such sum not exceeding 20p for every copy as the authority may determine.

(13) The proper officer of a district council shall send a copy of every byelaw made by the council, and confirmed, to the proper officer of the council of the region to which it applies; and the proper officer of a regional council shall send a copy of every byelaw made by that council, and confirmed, to the proper officer of the council of any district to which it applies.

(14) The provisions of this section shall apply, subject to any necessary modifications, in the case of byelaws made by any authority other than a local authority under any enactment passed before the coming into force of this Act and incorporating or applying any of the enactments set out in subsection (1)(c) above.

(15) In this section "the confirming authority" means the authority or person, if any, specified in the enactment (including any enactment in this Act) under which the byelaws are made, or in any enactment incorporated therein or applied thereby, as the authority or person by whom the byelaws are to be confirmed, or if no authority or person is so specified, means the Secretary of State:

Provided that, notwithstanding that a local Act specifies otherwise, the confirming authority in relation to byelaws made under any local Act shall be the Secretary of State.

S. 202(13) excluded by Civil Aviation Act 1982 (c.16), s. 32(4)

[202A. A local authority shall, not later than 10 years from whichever is the later of the following times— Review of byelaws.

- (a) the coming into force of a byelaw which they have the power to revoke or amend;
- (b) the coming into force of this section;

review that byelaw and do so thereafter at intervals of not more than 10 years.

202B. (1) A local authority shall, in accordance with this section, keep a register of all byelaws which they have power to revoke or amend. Register of byelaws.

- (2) The register kept under subsection (1) above shall contain—

¹Ss. 202A-202C inserted (1.7.1984) by Civic Government (Scotland) Act 1982 (c. 45), ss. 110(3), 137(2)

- (a) a description of the byelaws, including a description of any offences created and penalties imposed by the byelaws;
- (b) the date or dates when the byelaws and any amendments to them were confirmed;
- (c) the date or dates when the byelaws and any amendments to them came or come into operation; and
- (d) the date when the byelaws and any amendments to them were last reviewed under section 202A of this Act.

(3) The register kept under subsection (1) above shall at such reasonable times and places as the local authority may determine be open to public inspection and any member of the public may make a copy of or extract from anything in it.

(4) No payment shall be charged or taken by the local authority for any inspection or the making of any copy or extract under subsection (3) above.

(5) The local authority may, on payment of such reasonable fee as they may determine, issue a certified true copy of an entry in the register; and any document purporting to be certified by the proper officer of the local authority as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

Revocation of
byelaws by
resolution.

202C. (1) Byelaws may be revoked in accordance with this section by resolution of the local authority having power (apart from this section) to revoke them.

(2) At least one month before the revocation under this section of any byelaws, notice of the proposed resolution revoking them shall be given in a newspaper circulating in the area to which the byelaws apply.

(3) The local authority shall not decide the question whether or not to revoke byelaws under this section without taking into account any objections made to them in response to the notice given by them under subsection (2) above.

(4) Byelaws revoked under this section shall cease to have effect on the date of their revocation or on such later date as may be specified in the resolution revoking them.

(5) It shall not be competent under this section to revoke, separately from the set of byelaws or byelaw containing it any byelaw or, as the case may be, any part of a byelaw which was inserted into the set of byelaws or, as the case may be, the byelaw by, or otherwise wholly or substantially derives from, a modification made by the confirming authority on the making or any amendment of the set of byelaws or, as the case may be, the byelaw.

(6) It shall not be competent under this section to revoke any byelaw or any part of any byelaw if the effect of the revocation would be to widen the scope of any other byelaw or, as the case may be, the remaining part of the byelaw.]

203. Byelaws made by a local authority, and for which specific provision is not otherwise made, may provide that persons contravening the byelaws shall be liable on summary conviction to a fine not exceeding such sum as may be fixed by the enactment conferring the power to make the byelaws, or, if no sum is so fixed, the sum of [1level 2 on the standard scale], and in the case of a continuing offence a further fine not exceeding such sum as may be fixed as aforesaid, or, if no sum is so fixed, the sum of £5 for each day during which the offence continues after conviction thereof.

Offences against
byelaws.

S. 203 excluded by Civil Aviation Act 1982 (c. 16), s. 32(4)

204. The production of a copy of a byelaw purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the proper officer of the authority stating—

Evidence of
byelaws.

- (a) that the byelaw was made by the authority;
- (b) that the copy is a true copy of the byelaw;
- (c) that on a specified date the byelaw was confirmed by the authority named in the certificate or, as the case may require, was sent to the Secretary of State and has not been disallowed;
- (d) the date, if any, fixed by the confirming authority for the coming into operation of the byelaw;

shall be sufficient evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign a certificate in pursuance of this section.

¹"level 2 on the standard scale" substituted for "£20", except in relation to s. 203 as applied to byelaws made under any provision contained in a local or private Act other than by a local authority, by Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289C(2)(3) (as inserted by Criminal Law Act 1977 (c. 45), Sch. 11 para. 5) and by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), ss. 289F, 289G (as inserted by Criminal Justice Act 1982 (c. 48), s. 54)

Control of the
seashore, adjacent
waters and inland
waters.

121. (1) Insofar as it is necessary to do so for the purpose of preventing nuisance or danger at, or preserving or improving the amenity of, or conserving the natural beauty of, the seashore, a district or islands council may, in accordance with this section, make byelaws—

- (a) regulating or prohibiting any activity by way of trade or business with, or in expectation of personal reward from, members of the public on the seashore;
- (b) regulating the use of vehicles on the seashore;
- (c) regulating the exercise of sporting and recreational activities on the seashore.

(2) Byelaws under subsection (1) above may confine the exercise of any activity (including the use of vehicles or kinds of vehicles) specified in the byelaws to a part of the seashore specified in the byelaws and prohibit the exercise in that part of the seashore of any other activity (including such use) so specified.

(3) A district or islands council may, in accordance with this section, make byelaws relating to the adjacent waters for the purpose of—

- (a) regulating the speed of pleasure boats in these waters;
- (b) regulating the use of pleasure boats in these waters so as to prevent their navigation in a dangerous manner or without due care and attention or without reasonable consideration for other persons;
- (c) requiring the use of effective silencers on pleasure boats in these waters;
- (d) regulating the activities in these waters of divers, surfers, water skiers and persons engaged in similar recreational pursuits.

(4) A district or islands council may make, in relation to inland waters, byelaws for the same purposes as they may, under subsections (1) and (3) above, make byelaws in relation to the seashore and adjacent waters. PART IX

(5) Byelaws may be made under this section only if-

(a) the district or islands council have complied with subsection (6) below and made such other inquiries as may be reasonably necessary to ascertain the existence and identity of each person having-

(i) in the case of byelaws under subsection (1) above, a proprietary interest in the seashore;

(ii) in the case of byelaws under subsection (3) above, a proprietary interest in relation to the adjacent waters;

(iii) in the case of byelaws under subsection (4) above, a proprietary interest in or in relation to the inland waters; and

(iv) in any case, a proprietary interest in any salmon fishings; being a proprietary interest which may be affected by the byelaws;

(b) subject to subsection (7) below, every person having a proprietary interest such as is mentioned, in relation to the byelaws, in paragraph (a) above has consented to their being made; and

(c) the district or islands council have, in connection with their proposal to make the byelaws, consulted such person or body, if any, as appears to them to be representative of persons who engage in each sporting or recreational activity which may be affected by the byelaws.

(6) The district or islands council shall give public notice of their proposal to make byelaws under this section and of the effect of subsection (5)(b) above in relation to that proposal in a newspaper circulating in the area where the byelaws are proposed to have effect.

(7) If a district or islands council have complied with subsections (5)(a) and (6) above, but the consent of a person whose consent is required under this section cannot be obtained because his existence or identity is unknown, or he cannot be found or fails to respond in any way to a request for his consent, the council may nevertheless proceed to make the byelaws but shall not proceed earlier than one month after the date of the advertisement under subsection (6) above or, if there were more than one advertisement, the later or last of those dates.

PART IX

(8) Byelaws made under this section may provide that persons contravening such provisions of the byelaws as may be therein specified as provisions contravention of which is an offence shall be liable, on summary conviction thereof, to a fine not exceeding £50 or such lesser sum as the byelaws may specify; and any offence against any such provision of such byelaws committed within adjacent waters may be inquired into and dealt with as if it had been committed within the area of the district or islands council concerned.

(9) A district or islands council may on the seashore or in or on adjacent waters place notices or other indications advising the public as to any danger or health hazard connected with the seashore or those waters.

(10) A district or islands council may provide staff for life saving and any boats or equipment which are appropriate for life saving.

(11) A district or islands council, when exercising their powers under this section, shall have regard to the need to protect and maintain any public rights under the guardianship of the Crown to use the foreshore, adjacent waters or, as the case may be, inland waters.

1967 c. 86.

(12) In subsection (1) above, the reference to conserving natural beauty shall be construed in accordance with section 78(2) of the Countryside (Scotland) Act 1967.

CONFIDENTIAL

PRIME MINISTER

DOGS (again!)

I mentioned at lunch time how the Commons' and Lords' Business Managers saw the final stages of the dogs vote going tomorrow. I attach a lengthy minute from the Lord President which sets this out, but my latest advice is that the position has moved on slightly.

The Lords will probably have three propositions to vote on tomorrow night. In the order in which they will be taken:

- (i) to insist on Lord Stanley's Dog Registration Scheme plus the Action on Dogs compromise and send the Bill back to the Commons;
- (ii) to accept an amendment by Lord Houghton which drops the Dog Registration Scheme but also rejects the Action on Dogs package;
- (iii) to accept the Bill as it has come from the Commons (when it will go straight to Royal Assent).

The latest assessment is that despite every effort the Lords' Whips make, the Lords will, at the first set of votes, go for proposition (i). The Commons, between 1800 and 2000 hours tomorrow night, will then have to agree the small technical amendment which the Lord President proposes, and sling it back to the Lords.

Unless we get lucky, the Lords will then vote for Proposition (ii). That gets them off the constitutional hook. The final decision (at about midnight) would then rest with the Commons, who would need to vote on whether to lose the whole of the Environmental Protection Bill, simply for the sake of preserving the Action on Dogs compromise. (It would not be possible for anyone in the Commons to resuscitate the Dog

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Registration Scheme at that stage.)

Am I right in thinking that you do not care strongly whether or not we keep the Action on Dogs bit of the package so long as we do not end up with a registration scheme (and ideally save the Bill as well)?

Yes

If so, it may still mean some awkward late night voting for the Government, but with the prospect of at least seriously wrong-footing the Opposition in the Commons. Because it will be them who would throw out the whole Bill for the sake of the small but useful Action on Dog proposals (which could quite easily come forward next year as a separate bill).

✓
Sorry this is all a bit messy, but I think that beyond stiffening up the Lords' Whips to do their absolute best (which I have already done), there is little more that can be done till it comes back to the Commons tomorrow night.

DM

DM

30 October 1990

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JS/AG

PRIME MINISTER**ENVIRONMENTAL PROTECTION BILL: DOGS**

I held a meeting this morning with the Business Managers in both Houses and DOE Ministers to consider our tactics in the light of last night's vote on this matter.

The clear advice we had from the Lord Privy Seal and the Chief Whip (Lords) was that, although the strict constitutional position is clear enough, constitutional arguments are likely to cut very little ice with the Lords on their first consideration of the package which will be returned to them on Wednesday. This is because the Commons majority has actually shrunk, which could encourage Peers on all sides of the House in the belief that they are entitled to ask the Commons to think yet again.

Our clear view was that, in order to bring the constitutional question to a sharp focus, if the bill does come back from the Lords with the registration amendment reinstated it should be returned to them forthwith. Our procedural advice is that this requires some technical modification to the package offered by the Commons: if no such amendment is made and the Commons simply insist on the package approved last night, the bill will be lost at that stage, before the Lords have properly addressed the constitutional issue. We felt this would be quite unsatisfactory. The meeting recognised the force of your argument that to go further than the 'Action for Dogs' package would cause confusion. What we now propose, therefore, is an amendment to the package which is entirely technical. This will

involve providing that the period for which a local authority must keep a dog before it is disposed of or put down, which is set at 7 days in the package as it stands, may be varied by Order. This will enable Emily Blatch, in presenting the issue to the Lords again, to make it crystal clear that they now face the constitutional question whether they should overrule the will of the Commons - which would by then have been expressed three times. An amendment which is purely technical should prevent the argument from becoming embroiled in further elaboration in the merits of the case. She will make it absolutely clear to the Lords that no further modifications would be forthcoming from the Commons and that the automatic consequence of failure to accept the package will be the loss of the bill, the constitutional consequences of which will be laid at their door. It is her judgement, and that of the Lords Business Managers, that on this basis the Lords may well not press Lord Stanley's amendment, and the bill could go forward to Royal Assent.

There is a possibility, however, that the Lords could at that stage reject the Action for Dogs package (with its technical amendment) as well. This would leave the Bill without any provisions on dogs but otherwise intact. A final decision then rests with the Commons. They would not be able at that stage to reinsert the registration scheme, and we would aim to ensure that they did not reinstate the Action for Dogs package in any form but accepted the bill unamended so that it could go for Royal Assent.

The sequence of events on Wednesday could be quite complicated, and you may find it helpful to have the attached flow-chart showing how the various options work out.

I hope you will agree that we should proceed on this basis, which seems to offer the best chance of success. Against the possibility that the bill is lost, we are making contingency plans to have an amended version of the Prorogation Speech printed. We will have time to consider in the light of events whether any changes are needed in the Opening Speech.

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I am copying this to David Waddington, Peter Lilley, John Belstead, Tim Renton, Bertie Denham, David Trippier, David Heathcoat-Amory, Emily Blatch and to Sir Robin Butler.

A handwritten signature in dark ink, appearing to be 'GH', is centered on the page.

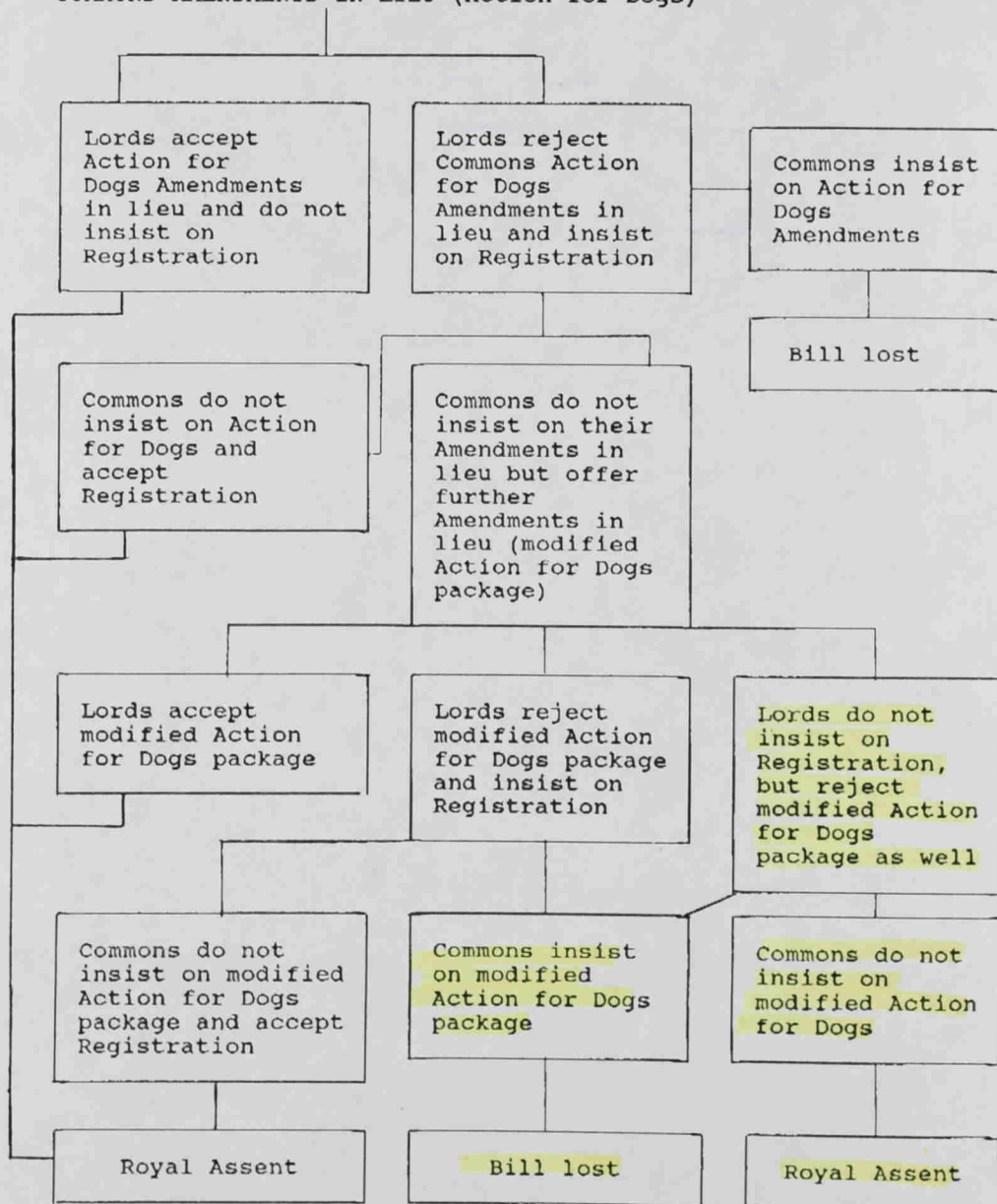
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30 October 1990

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ENVIRONMENTAL PROTECTION BILL: DOGS

COMMONS AMENDMENTS IN LIEU (Action for Dogs)



CONFIDENTIAL

DSG

File



Sec Policy Unit

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

29 October 1990

Dear Tim

ENVIRONMENTAL PROTECTION BILL: DOGS

The Prime Minister was grateful for the Lord President's minute of 26 October and for the further thought which he and colleagues have given to ways in which we might ensure that the Bill goes through without a dog registration scheme.

The Prime Minister feels, however, that having offered the "Action on Dogs" compromise we should go no further: if the Lords were minded to reject the Commons' view, it is unlikely that a concession of the sort outlined in the Lord President's minute would sway them, and it would muddy the clarity of the issue facing the Lords in those circumstances.

I am copying this letter to Colin Walters (Home Office), Martin Stanley (Department of Trade and Industry), Gillian Kirton (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), Douglas Slater (Office of the Captain of the Gentlemen-at-Arms), Sandy Bishop (Minister of State's Office, Department of the Environment), Simon Eden (PUSS's Office, Department of the Environment) and to Sonia Phippard (Cabinet Office).

Yours ever

Dominic

Dominic Morris

Tim Sutton, Esq.,
Lord President's Office.

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DSG



Prime Minister

I think that the suggestion in para 2 is misguided tactics. It would

PRIME MINISTER

ENVIRONMENTAL PROTECTION BILL : DOGS

1 At Cabinet yesterday we heard that John Belstead and Bertie Denham are now somewhat more optimistic that the amendments in lieu with which we plan to replace the registration scheme will be accepted in the Lords. Nevertheless, we need to ensure that we are not faced prematurely in the Commons with the stark choice between registration and losing the Bill. This could arise if the Lords insisted on the registration amendment and we had nothing ready to offer as a further amendment in lieu. As your response to my minute of 23 October emphasised, it is important that the Lords have the chance to reflect soberly on the full implications of threatening the loss of a major set piece of our legislative programme, over this one relatively minor issue.

2 Accordingly I held a meeting yesterday evening with the Business Managers, David Trippier and David Heathcoat-Amory, Emily Blatch and John Patten at which we discussed ways in which the Action on Dogs package could be marginally modified to enable it to be sent back to the Lords a second time. We would not want to offer any major modifications or real concessions: we have gone as far as we should reasonably go in offering Action on Dogs itself. The most promising idea we came up with was to pick up a proposal from "Control of Dogs" that there should be a new offence of allowing a dog to stray persistently, with a fine of, say £100. David Trippier is now arranging for detailed drafting to be carried out, in consultation as necessary with the Home Office, so that we are ready to act without delay if necessary next week.

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- 3 Although what we heard at Cabinet implies that none of this may be necessary, it clearly makes sense to firm up now contingency plans for putting added pressure on the Lords rather than risk losing the Bill. For should the need arise, we will have only a few hours next Wednesday in which to implement them.
- 4 I am copying this to David Waddington, Peter Lilley, John Belstead, Tim Renton, Bertie Denham, David Trippier, David Heathcoat-Amory and to Sir Robin Butler.

A handwritten signature in black ink, appearing to be 'GH', located below the text of the second paragraph.

GH

26 October 1990

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

24 October 1990

Dear Tim

ENVIRONMENTAL PROTECTION BILL: DOGS

The Prime Minister was grateful for the Lord President's minute of 23 October setting out the views of business managers and Environment Ministers on how the question of dogs should be handled when the Environmental Protection Bill returns to the Commons next week.

The Prime Minister accepts the business managers' view that offering the 'Action on Dogs' package provides a better chance of successfully overturning Lord Stanley's amendment than would a straight reversal. She is content therefore that the three clauses dealing with collection, holding and destruction of strays and identification tag requirements, should be tabled today.

The Prime Minister is also content that the Home Secretary should answer the arranged written PQ on model bye-laws for the regulation of dogs.

The Lord President's minute went on to consider what might happen if the Commons supported the Government package but the Lords then insisted on a dog registration scheme. The Prime Minister is firmly of the view that the Government should not accept a dog registration scheme in those circumstances. The Lords would need to be brought to recognise the consequences for the Environmental Protection Bill as a whole of any insistence upon a registration scheme.

A copy of this letter goes to Peter Storr (Home Office), Phillip Ward (Department of the Environment), Gillian Kirton (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), Douglas Slater (Government Whips' Office, H/L), Sandy Bishop (Mr Trippier's office, DOE), Simon Eden (Mr Heathcoat-Amory's office, DOE) and Sonia Phippard (Cabinet Office).

Yours ever,
Dominic Morris

Tim Sutton, Esq.,
Lord President's Office

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PRIME MINISTER

DOG REGISTRATION: ENVIRONMENTAL PROTECTION BILL

I attach at Flag A a note from the Lord President recommending how we handle the Lords amendment on Dog Registration in the Environmental Protection Bill.

He recommends that the Government should overturn Lord Stanley's amendment in the Commons but should also table amendments tomorrow implementing new clauses in the Government's earlier 'Action on Dogs' package dealing with collection, holding and destruction of strays and with the requirement that dogs should wear identification tags. Commons consideration of Lords amendments on the Bill is not until next Monday, but the Business Managers' view is that tabling the amendments now will enable the Whips to rally the waverers to the Government's position and would prevent the purists from charging the Government with have bounced the House of Commons. As the Lord President's minute notes, the 'Action on Dogs' package would impose some burdens on local authorities, but a significant part of the cost could be offset by fees.

I think the Lord President's strategy is the right one: unless the ground for the Government's package is carefully prepared there is a risk that Lord Stanley's dog registration amendment would simply be accepted in a vote next Monday and we would be lumbered with a registration scheme. The Whips' view is that, with the proposed package, we could get it reversed in the Commons at least.

No

More contentious is the Lord President's recommendation that if the Commons do agree the Government's package but the Lords then reject it in favour of the Dog Registration Scheme, we should then cave in. The choice is an unenviable one and certainly ping pong between the Lords and Commons at this stage risks losing the whole of the Environmental Protection Bill. I suggest this is not a bridge that you need to cross at this

stage. Better to wait and see if the proposed package gets through the House of Commons and then get a further view from the Lords Business Managers in the light of the Commons views before coming to your final decision.

At Flag B is a proposed Written Answer from the Home Office. They had been holding fire on this until the Lord President's overall handling note had been seen by you. The Home Secretary's proposed answer deals with model bye-laws on dog fouling and 'poop scoops'. He is proposing to confirm local authority powers to make 'poop scoop' bye-laws in parks, recreation grounds and open spaces, except heaths and woodlands, without the local authority having to provide alternative 'uncontrolled' areas for dogs; and to introduce 'poop scoop' bye-laws for footpaths and built up residential areas whether or not adjacent to highways and grass verges on the edge of roads. The Home Office also propose to extend local authority powers to pass bye-laws on requiring dogs to wear leads, particularly to areas, or at times, where young children may be playing.

The DoE think that these bye-law proposals, which make sense in themselves, will strengthen the chance of the Lord President's package being accepted by the Commons.

Content:

- for the 'Action on Dog' clauses to be introduced in the Commons tomorrow, as the Lord President proposes?
- for the Home Secretary to announce the outcome of his review on dog bye-laws by Written Answer at the same time?
- that the Government's reaction to a Lords reversal of the Lord President's package be considered in the light of the Commons decision next Monday?

DM

DOMINIC MORRIS

23 October 1990

We do not cover
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(The Prime Minister has already seen & commented on the faxed version).

PRIME MINISTER



ENVIRONMENTAL PROTECTION BILL: DOGS

At Cabinet last Thursday ^{at} the Secretary of State for the Environment proposed that we should discuss on 25 October how to handle the question of dogs which will arise when the Environmental Protection Bill returns to the Commons next week. I held a meeting this afternoon with David Trippier and David Heathcoat-Amory who are responsible for the Bill and with the Lords and Commons Business Managers to discuss the options open to us. We concluded that there would be advantage in making the Government's position clear on Wednesday to provide somewhat longer notice of the amendments which we think it is necessary to table. This will allow more time for the Whips to seek to persuade colleagues that the course we are following is the correct one, as well as doing what we can to defuse charges that we are providing insufficient notice of the amendments. This minute sets out our proposals and seeks your agreement.

The Present Position

As it stands the Bill contains a clause moved by Lord Stanley which would require the introduction of a dog registration scheme. We have arranged for the drafting to be corrected at Lords Report, but entirely without commitment as to the Government's eventual position on the matter. We had issued some time ago a consultation paper entitled "Action on Dogs" setting out proposals for dog wardens, the treatment of strays, dog fouling and related bye-laws. We followed this up earlier this year with "The Control of Dogs" which discussed possible ways of dealing with dangerous dogs. In the event, the existence of these consultation papers was not sufficient to prevent the Lords from accepting Lord Stanley's amendments. No commitments were given to introduce "The Control of Dogs" package but there is a fairly clear commitment, though no firm timetable, that the substance of "Action on Dogs" will be introduced.

Possible Course of Action

At the meeting we agreed that only two courses of action are open to us: to go for straight reversal of Lord Stanley's amendment or to offer a compromise package in lieu of it, based on "Action on Dogs". This would consist of three clauses dealing with the collection, holding and destruction of strays and with the requirements that dogs should wear identification tags.

The Chief Whip (Commons) and his colleagues have been able to carry out only limited soundings but their clear view is that we stand a greater chance of success in the House of Commons by offering the "Action on Dogs" package as opposed to seeking straight reversal of the registration amendment. Department of the Environment Ministers strongly support that view. They consider that it would be seen as unsatisfactory for the Government to continue to defer action to implement any of the proposals which have been the subject of consultation. The implementation of the package would impose some burdens on local authorities but the advice we had from the Department of the Environment was that it should be possible to set fee scales so as to offset a significant part of the cost.

Inevitably there are some risks inherent in this course of action. The amendments could themselves give rise to significant debate and cross-amendment. The Lords Business Managers have some anxiety that the compromise package may be less acceptable to the Lords than straight reversal, because some elements in it might be thought to have unintended consequences for sporting dogs. So too the shortness of notice of such substantial amendments could lead to objection from the Lords in their capacity as a revising Chamber. There is thus an unavoidable risk of a defeat for the Government on this issue - as indeed there could be if we were to try the course of straight reversal. On the other hand, granted the Commons would be returning substantial amendments in lieu, there should be a reasonable expectation of these amendments being taken by the Lords and accepted.

Our conclusion at this afternoon's meeting was, that given this risk, we should offer the "Action on Dogs" compromise package and that, subject to your agreement, the amendments should be tabled tomorrow as being more likely to carry the day in the Commons.

We also considered briefly the options open to us if the House of Lords insisted on the registration scheme amendment. Our conclusion was that there would be insufficient time to devise a further alternative, nor was it clear what that might compromise. Accordingly we felt that, in those circumstances, there would be no alternative but to accept the inevitability of the registration scheme. It is on this basis that we devised the proposed approach, as being the best, if not the only, hope of knocking registration out of this Bill. If you agree with this conclusion, we should table the amendments straightaway.

I am copying this minute to Cabinet colleagues, the Chief Whips (Commons and Lords), those present at this afternoon's meeting and Sir Robin Butler.

Alma Baxter

GH

*(Approved by the Lord
President & signed on
his behalf)*

23 October 1990

B

DOG BYELAW REVIEW: DRAFT ANNOUNCEMENT

Question

To ask the Secretary of State for the Home Department if he will make a statement on his review of model byelaws for the regulation of dogs in the light of comments received in response to the Department of the Environment consultation document 'Action on Dogs'.

Answer

On 10 August 1989 the Department of the Environment published a consultation document 'Action on Dogs' which sought views on various issues, including the content and operation of the Home Office model byelaws. Comments were submitted by 126 local authorities and other bodies and these have been carefully considered in the light of our experience in dealing with dog byelaw applications since the models were last reviewed in 1987.

When reaching his conclusions, the aim of the Home Secretary has been to offer a wide range of possible byelaw provisions for dog control which can be used by local authorities as building blocks in a variety of combinations to produce schemes tailored to meet local needs.

By far the largest number of those commenting suggested making the 'poop-scoop' byelaw more freely available. This makes it an offence for a person in charge of a dog to fail to remove

any faeces it may deposit in designated parks, recreation grounds and open spaces. At present the byelaw may be applied to any children's playground or sports pitch, beaches and promenades in the summer season, trunk road picnic sites, and picnic areas in country parks, but it may only be applied to parks and open spaces provided that there are alternative uncontrolled areas. Experience of operating the byelaw has shown that, while it has been successful in designated parks, uncontrolled areas nearby tend to become heavily fouled. We consider that it is reasonable to expect dog owners to clear up after their pets in places used by other members of the public, including children. Therefore my rt hon. and learned Friend has decided that he will be prepared to confirm 'poop-scoop' byelaws for any park, recreation ground or open space, except heaths and woodlands where the local authority considers them appropriate and without the need to provide alternative uncontrolled areas. The byelaw will also be available for beaches and promenades all the year round. Parts of beaches which are subject to a dog ban during the summer season may be designated as 'poop-scoop' areas for the remainder of the year.

We have also considered the byelaws available to control fouling on highways. At present, local authorities may introduce a byelaw which makes it an offence simply to allow a dog to foul a pavement next to a carriageway or an adjacent grass verge up to 4 metres wide. Although most local authorities have this byelaw, it has been criticised on various grounds: it provides no protection either for footpaths which are not adjacent to a highway or for pedestrianised areas and, once the fouling has taken place, the faeces remain there. Since our aim is to encourage dog owners to remove dog mess from the environment, my rt hon. and learned Friend proposes to replace the 'no fouling' byelaw for pavements with a further extension of the 'poop-scoop' byelaw.

In addition to recreation grounds and open spaces, the 'poop-scoop' byelaw will be freely available for local authorities to apply to any footpath in a built-up or residential area

whether or not it is adjacent to a highway. The byelaw can also be applied to any grass verge which is maintained in good order and is adjacent to a highway. It will also be available for any pedestrianised area owned by a local authority such as a shopping precinct.

My rt hon. and learned Friend has also decided to make the 'poop-scoop' byelaw available for the gutters of highways in urban areas. While it would be too hazardous to both the pet owner and the traffic to extend the 'poop-scoop' byelaw to the carriageway itself, the 'no fouling' byelaw will become available for carriageways in built-up areas. This will prevent the transfer of the problem from the gutter to the carriageway and deter owners from permitting their pets to foul the highway. It will be open to local authorities to choose to use these byelaws for pavement, gutter and carriageways either individually or in combination to meet their local needs.

We have also considered the operation of the 'dogs on leads' byelaw. This compels owners to keep their dogs on leads at all times in designated places. It may be applied to parks and other open spaces where a need can be shown eg, ornamental gardens, children's play areas and bowling greens, promenades adjacent to beach ban areas during the summer months, and areas where the disturbance of wildlife is a consideration.

There is a need to balance the interests of those who wish to visit parks without being bothered by loose dogs, such as mothers with young children, and pet owners who wish to exercise their dogs off the lead at some time during the day. But the balance is, in general, best determined locally, bearing in mind the need to protect those, such as children, who are likely to be frightened or disturbed by loose dogs. In order to assist local authorities, my rt hon. and learned Friend has decided that a wider range of byelaws should be made available to promote greater flexibility.

First, the 'dogs on leads' byelaw will be available in a wider range of circumstances than previously permitted, including promenades all the year round, where the local authority is able to justify the use of the byelaw, which will normally involve showing areas are available locally where dogs may be exercised off the lead at some time during the day. Secondly, two new model byelaws will be made available. Instead of imposing a requirement for a dog to be kept on a lead in a park or part of a park all day, it will be possible for a local authority to limit the lead requirement to certain times of day or days of the week, for example when young children are most likely to be there. Different times could be imposed in different parks in the same area to cater for various local needs. A second new byelaw will give powers to council officers to ask for dogs to be put on a lead if it is necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance. This byelaw will be available to local authorities to apply to designated parks and open spaces, again where a need can be demonstrated.

Finally, we have examined the byelaw which prohibits dogs from entering designated and enclosed grounds, enclosed parts of other grounds (children's play areas, bowling greens etc) and parts of beaches during the summer season. My rt hon. and learned Friend has concluded that these measures should continue to be available on the same basis as before, but that a wider variety of byelaws should be available to the local authority. Two further model byelaws have been developed. First, a byelaw which enables dogs to be banned from a designated park or open space for a specified period of the day. This will be similar to the new time limited 'dogs on leads' byelaw and will be available for open parks as well as enclosed ones. Secondly, we have developed a new model byelaw which will enable local authorities to ban dogs from designated enclosed parks, apart from a specially designated and enclosed exercise area. The exercise area will need to be of a reasonable size and usually be subject to a 'poop-scoop' byelaw. Owners will be required to take their dogs on the lead from the park entrance to the exercise area.

When considering which combination of byelaws is most suitable for their areas, local authorities will need to bear in mind that, unlike the general law, the validity of byelaws, including their reasonableness, can be challenged in the courts. Local authorities will need to weigh up the needs of various sections of the community. These will include mothers with children and others who wish to be able to enjoy a visit to the park either free from dogs or free from boisterous loose dogs. There will also be pet owners who wish to exercise their dogs off the lead at least once a day, reasonably near their homes. These will include families with children and dogs who wish to go to the park together, shift workers, the elderly who cannot walk far and solitary women who would wish to choose a time to exercise their dogs when they feel it is safe to do so.

My rt hon. Friend, the Secretary of State for the Environment intends that the same range of byelaws should be available to local housing authorities for public housing estates and amenity greens.

The consultation paper 'Action on Dogs' also sought comments on the present procedure for local highway authorities to make 'dogs on leads' orders under section 27 of the Road Traffic Act 1988, and whether this power should be replaced by a byelaw making power. The balance of comment was in favour of change. The Government has taken note of this and proposes to take this forward when a suitable opportunity arises.

My rt hon. and learned Friend is grateful to all the bodies that commented on the byelaws and he hopes that the increased range of measures will strengthen the ability of councils to regulate dogs and to deal effectively with the fouling of public areas. Details of this Answer, together with the wording of the new model byelaws, will be circulated to local authorities shortly.

GB/AG

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PRIME MINISTER**ENVIRONMENTAL PROTECTION BILL: DOGS**

At Cabinet last Thursday the Secretary of State for the Environment proposed that we should discuss on 25 October how to handle the question of dogs which will arise when the Environmental Protection Bill returns to the Commons next week. I held a meeting this afternoon with David Trippier and David Heathcoat-Amory who are responsible for the Bill and with the Lords and Commons Business Managers to discuss the options open to us. We concluded that there would be advantage in making the Government's position clear on Wednesday to provide somewhat longer notice of the amendments which we think it is necessary to table. This will allow more time for the Whips to seek to persuade colleagues that the course we are following is the correct one, as well as doing what we can to defuse charges that we are providing insufficient notice of the amendments. This minute sets out our proposals and seeks your agreement.

The Present Position

As it stands the Bill contains a clause moved by Lord Stanley which would require the introduction of a dog registration scheme. We have arranged for the drafting to be corrected at Lords Report, but entirely without commitment as to the Government's eventual position on the matter. We had issued some time ago a consultation paper entitled "Action on Dogs" setting out proposals for dog wardens, the treatment of strays, dog fouling and related bye-laws. We followed this up earlier this year with "The Control of Dogs" which discussed possible ways of dealing with dangerous dogs. In the event, the existence of these consultation papers was not sufficient to prevent the Lords from accepting Lord Stanley's amendments. No commitments were given to introduce "The Control of Dogs" package but there is a fairly clear commitment, though no firm timetable, that the substance of "Action on Dogs" will be introduced.

Possible Course of Action

At the meeting we agreed that only two courses of action are open to us: to go for straight reversal of Lord Stanley's amendment or to offer a compromise package in lieu of it, based on "Action on Dogs". This would consist of three clauses dealing with the collection, holding and destruction of strays and with the requirements that dogs should wear identification tags.

The Chief Whip (Commons) and his colleagues have been able to carry out only limited soundings but their clear view is that we stand a greater chance of success in the House of Commons by offering the "Action on Dogs" package as opposed to seeking straight reversal of the registration amendment. Department of the Environment Ministers strongly support that view. They consider that it would be seen as unsatisfactory for the Government to continue to defer action to implement any of the proposals which have been the subject of consultation. The implementation of the package would impose some burdens on local authorities but the advice we had from the Department of the Environment was that it should be possible to set fee scales so as to offset a significant part of the cost.

Inevitably there are some risks inherent in this course of action. The amendments could themselves give rise to significant debate and cross-amendment. The Lords Business Managers have some anxiety that the compromise package may be less acceptable to the Lords than straight reversal, because some elements in it might be thought to have unintended consequences for sporting dogs. So too the shortness of notice of such substantial amendments could lead to objection from the Lords in their capacity as a revising Chamber. There is thus an unavoidable risk of a defeat for the Government on this issue - as indeed there could be if we were to try the course of straight reversal. On the other hand, granted the Commons would be returning substantial amendments in lieu, there should be a reasonable expectation of these amendments being taken by the Lords and accepted.

Our conclusion at this afternoon's meeting was, that given this risk, we should offer the "Action on Dogs" compromise package and that, subject to your agreement, the amendments should be tabled tomorrow as being more likely to carry the day in the Commons.

We also considered briefly the options open to us if the House of Lords insisted on the registration scheme amendment. Our conclusion was that there would be insufficient time to devise a further alternative, nor was it clear what that might compromise. Accordingly we felt that, in those circumstances, there would be no alternative but to accept the inevitability of the registration scheme. It is on this basis that we devised the proposed approach, as being the best, if not the only, hope of knocking registration out of this Bill. If you agree with this conclusion, we should table the amendments straightaway.

I am copying this minute to Cabinet colleagues, the Chief Whips (Commons and Lords), those present at this afternoon's meeting and Sir Robin Butler.

Gillian Baxendale

GH

*(Approved by the Lord
President & signed on
his behalf)*

23 October 1990

ccr



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

17 OCT 1990

Dear Gillian,

We have been asked by the Department of the Environment to announce the outcome of the dog byelaw review by way of a reply to an arranged Parliamentary Question on either 22 or 23 October. The idea is to give greater backing to the Government's intention of overturning the amendment proposing a dog registration scheme during the Commons' Consideration of Lords' Amendments to the Environmental Protection Bill. From the point of view purely of Home Office interests, we see no reason why the announcement should not be made at this stage. However in your letter of 25 September to Dominic Morris you recorded the Lord President's view that it would be desirable to avoid offering amendments to the Bill implementing Action on Dogs at Commons' Consideration of Lords' Amendments if reversal of the dog registration scheme amendment could be achieved without doing so. Since the dog byelaw review arose from the Action on Dogs consultation exercise, Mrs Rumbold has asked me to find out from you whether the Lord President has any objection to the idea of making the announcement about the dog byelaw review before Commons' Consideration of Lords' Amendments.

The content of the proposed announcement was agreed by Home Office Ministers earlier this year in consultation with the ... No 10 Policy Unit. I enclose a copy of it for your information.

I have sent copies of this letter to Dominic Morris (No 10), Phillip Ward (DoE), Jim Gallagher (Scottish Office), Lawrence Conway (Welsh Office), Douglas Slater (Government Whips Office,

/House of Lords),

Ms Gillian Baxendine
Private Secretary to The Lord President of The Council

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House of Lords), Murdo Maclean (Chief Whips Office), Sonia Phippard (Cabinet Office), and John Mills (No 10 Policy Unit).

Yours ever

Julie Lowton

JULIE LOWTON
Assistant Private Secretary

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File
10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

1 October 1990

Dear Gillian,

DOGS

Thank you for your letter of 25 September to Dominic Morris about the handling of Lord Stanley's amendment on a dog registration scheme. The Prime Minister is content with the handling proposed by the Lord President after his recent meeting to discuss the way forward. She accepts that the Government should not seek to overturn the amendment at Lord's Report stage but should do so at the stage of the Commons Consideration of Lords Amendments. She agrees that Lord Stanley should be given a tidied up version of his amendment at the Lord's Report stage just in case it should prove impossible to overturn the amendment. However, she has commented that the Government must knock it out in the Commons. She accepts that the package of proposals in Action for Dogs should be introduced at CCLA stage if necessary as a defence against the Stanley amendment; but agrees that a decision on this should be taken nearer the time.

I am copying this letter to Phillip Ward (Department of the Environment), Peter Storr (Home Office), Philip Rutnam (Financial Secretary's Office), Jim Callagher (Scottish Office), Miss Judith Simpson (Welsh Office), Douglas Slater (Government Whips' Office, House of Lords), Murdo Maclean (Chief Whips Office), Juliet Wheldon (Solicitor General's Office), Sonia Phippard (Cabinet Office), and to Sir Henry de Waal, Muir Russell (Cabinet Office) and John Mills (No. 10 Policy Unit).

Yours sincerely,

Caroline

CAROLINE SLOCOCK

Ms. Gillian Baxendine,
Lord President's Office

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PRIME MINISTER

DOGS

Following the Government's defeat in the Lords on an amendment for a dog registration scheme, the Lord President has been considering at your request how best to overturn this amendment. After a meeting with colleagues, he has decided, subject to your views, that:

- the Government should seek to overturn the amendment at the Commons Consideration of Lords Amendments, not at Lord's Report stage. The mover of the amendment, Lord Stanley, would be given a tidied up version of his amendment to table, just in case the Government was unsuccessful in overturning it at CCLA;

- advice should be taken from the Chief Whip nearer the time on whether to offer up the package of Action for Dogs measures at CCLA as way of staying off the Stanley amendment. It is far from certain that the Government could win a vote to overturn the Stanley amendment and the introduction of this package into the Bill would help the Government's case.

A full report from the meeting is attached. This points out that the Lord President would be against offering up the Action for Dogs package at CCLA if the amendment could be overturned without it. The main reason for this view is the cost for community charge payers of the package - increasing the charge by around 60p. In the absence of a registration scheme, there would be no possible way to ring-fence the cost and make it self-financing.

I have spoken to John Mills about this, who recommends that you should agree with the handling proposed by the Lord President.

Agreed mt

But the issue of financing of the Action for Dogs proposals perhaps might usefully be clarified. When you last considered this question you suggested that any measures to control dogs which should be introduced should be ring-fenced from the community charge and financed by dog-owners. Apparently this is not possible without some form of dog owner registration scheme and fee. You may recall that the Secretary of State for Environment put forward the idea of a discretionary local registration scheme to cover the costs of dog wardens. But colleagues have ruled out this proposal because of the arguments against any form of registration scheme.

But there is a danger it seems to me that the Government is painting itself into a corner where it cannot implement its own proposals on dogs without a dog registration scheme.

Content:

- with the handling proposed by the Lord President i.e. to resist the Lord Stanley amendment in the Commons and reach a decision about whether to introduce the Action for Dogs package in the Bill nearer the time?

- to give a steer that you wish to see the Action for Dogs package recover its costs as far as possible, but accept that they cannot be ring-fenced from the community charge and that some costs are inevitable?

Yes not
N.B. We must make it clear in the Commons not

CS

Caroline Slocock
28 September 1990

DOMINIC MORRIS

File
26 September 1990

DOGS

I attended the Lord President's meeting of which Gillian Baxendine's letter of 25 September to you is a record. *file with DM*

There was consensus on the approach to Parliamentary handling set out in the penultimate paragraph. This is clearly the best way to proceed for the time being.

A decision on whether to offer the 'Action on Dogs' package need not be taken until shortly before CCLA. But I sensed that the mood of the meeting was against offering it, on the grounds that

- it would impact on the community charge;
- it probably wouldn't affect the issue anyway.

(It is however worth recalling that the dog byelaws package is waiting for announcement. This is relatively minor, but still useful, and would be something at least on the table without any impact on the community charge. This was not touched on at the meeting).

For the record, I said at the meeting that I thought that what you had intended to say in the last substantive sentence of your letter of 16 September was that there should be ring-fencing if we were stuck with registration. As Gillian Baxendine's letter points out, this is not readily practicable without registration. This was in fact the burden of my note to you of 12 September; the point however got slightly lost in your note of 13 September to the Prime Minister and your subsequent letter to DOE.

Recommendation

The Prime Minister can endorse the Lord President's advice on Parliamentary handling, noting that a decision on whether to offer the 'Action on Dogs' package can only be taken nearer the time. This

Should also be the moment to decide whether to announce the outcome of the dog byelaws review instead of, or in addition to, Action on Dogs.

John Mills

JOHN MILLS

CONFIDENTIAL

celo



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

25 September 1990

Dear Dominic,

DOGS

The Lord President chaired a meeting of colleagues on 20 September to discuss the handling of the defeat in the House of Lords on Lord Stanley of Alderley's dog registration amendment, and the proposals discussed in the Secretary of State for the Environment's minute to the Prime Minister of 2 August.

at head
The Secretary of State for the Environment had proposed that amendments should be brought forward at Lords' Report stage to implement the Action for Dogs measures foreshadowed in August 1989, in order to demonstrate that the Government was taking action to tackle the problem of stray dogs. The Lords' business managers were, however, strongly of the view that no further proposals on dogs should be brought forward by the Government in the House of Lords. The meeting accepted their view that the Government's chances of restoring the original position were more likely - though by no means certain - to succeed, if the counter-attack was held back for the Commons. If undertaken in the Lords, it could all too easily run into further trouble. It was conceivable, for example, that the House might seek to recommit the Bill if the Action for Dogs proposals were introduced at Lords Report stage. Moreover, the publication of the consultation paper 'The Control of Dogs' in June had failed to deter their Lordships from voting for a registration scheme; in many ways, its effect has been to increase support for Lord Stanley's amendment, particularly on the part of the field sports lobby who were concerned about the proposals to muzzle or ban dangerous dogs. It was agreed that, as already foreseen, no further action on 'The Control of Dogs' proposals would be taken prior to the end of the consultation period in November.

The dog registration amendment passed by the House of Lords is technically deficient in a number of detailed respects, and colleagues agreed that it would prudent to ensure that the clause is amended to make it workable. It is proposed to offer the drafting amendments to Lord Stanley to table, on the basis that this is entirely without prejudice to the Government's decision whether to seek to reverse the substantive amendment in the House of Commons. This apart, it was agreed that :

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1. no further action should be taken to sway opinion in the Lords and ;
2. no announcement made while the Environmental Protection Bill remains in the House of Lords about the Government's intention to reverse the registration amendment.

Upon this basis, it was agreed that the Action for Dogs package might be better held in reserve to be tabled as an amendment in lieu of Lord Stanley's amendment at CCLA. Parliamentary Counsel confirmed that there would be no procedural difficulty about this. It is difficult at this stage to assess the chances of a successful reversal of the amendment in the Commons. The Deputy Chief Whip said that there could be no certainty that the Government would secure a majority, given the size of the vote in favour of registration in the Lords and the small margin (12) by which Janet Fookes' amendment had been voted down at Commons Report stage. It was felt, however, that the chances of defeating Lord Stanley's amendment would be greater if the Action for Dogs package was offered in its place - but, if at all, in the Commons rather than in the Lords.

Ministers recognised that this approach has the drawback that the cost of implementing the Action for Dogs measures would fall on community charge-payers, increasing the average charge by around 60p. But in the absence of a registration scheme (which Ministers would if at all possible want to avoid) there was no possible way of ring-fencing the costs of schemes to deal with stray dogs, so that they fell only on dog-owners. The Secretary of State for the Environment had canvassed in his minute a discretionary local registration scheme as a fall-back position: colleagues agreed, however, that the Government should not propose any form of dog registration, when the arguments against it are so strong, and have been supported by many Government backbenchers in their constituency correspondence.

Against this background, it was agreed that new clauses implementing the Action for Dogs package should be brought forward at CCLA as amendments in lieu of Lord Stanley's amendment.

In the light of the meeting the Lord President proposes that we should proceed as follows:-

1. No attempt should be made to overturn Lord Stanley's amendment in the House of Lords.
2. The Department of the Environment should arrange for Lord Stanley to be given technical amendments, to be tabled in his name, to remove the deficiencies in his original amendment. In accepting these the Government would make it clear that this was entirely without prejudice to their view on the desirability of registration and the position to be taken on consideration of the Bill by the Commons.

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3. The Department of the Environment should plan on the basis that amendments implementing Action for Dogs should be offered in lieu of Lord Stanley's amendment at CCLA. A decision on whether these amendments need to be tabled should be taken in the light of further advice from the Chief Whip (Commons) nearer the time. The Lord President feels that it would clearly be desirable to avoid having to make this concession, with its associated implications for local authority expenditure and community charges, if straight reversal of the amendment could be achieved without it. In the meantime no public commitment to introducing the Action for Dogs provisions should be made.

A copy of this letter goes to Phillip Ward (DE), Peter Storr (HO), Steven Flanagan (Financial Secretary's Office), Jim Gallagher (Scottish Office), Lawrence Conway (Welsh Office), Douglas Slater (Government Whips' Office, House of Lords), Murdo Maclean (Chief Whips Office), Juliet Wheldon (Solicitor General's Office), Sonia Phippard (Cabinet Office), and to Sir Henry de Waal, Muir Russell (Cabinet Office) and John Mills (No 10 Policy Unit).

Yours,

Gllie

GILLIAN BAXENDINE
Private Secretary

Dominic Morris Esq
PS / Prime Minister's

CONFIDENTIAL



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

16 September 1990

Dear Tim

DOGS

The Prime Minister has seen the Environment Secretary's minute of 2 August and subsequent correspondence from colleagues. She feels that there is some further work to be done in resolving the most effective tactics for over-turning Lord Stanley's amendment and she would be very grateful therefore if the Lord President would chair a further meeting of colleagues in the next week or so to set the agreed tactics. The Prime Minister has noted that part of the Government's response may be to bring forward proposals from Action on Dogs. The Prime Minister feels that any measures which the Government brings forward and which involve extra burden on local authorities should be both ring-fenced from the community charge and self-financing, with their costs falling on the dog owner rather than on the general community.

A copy of this letter goes to Phillip Ward (Department of the Environment), Peter Storr (Home Office), Steven Flanagan (Financial Secretary's Office), Jim Gallagher (Scottish Office), Lawrence Conway (Welsh Office), Douglas Slater (Government Whips Office, House of Lords), Murdo Maclean (Chief Whip's Office) and Sonia Phippard (Cabinet Office).

Yours ever

Dominic

(DOMINIC MORRIS)

Tim Sutton, Esq.,
Lord President's Office.

CONFIDENTIAL



10 DOWNING STREET

Prime Minister

I do not think you
had the chance to finish
reading through this from
last night's box.

DM

RESTRICTED

PRIME MINISTER

DOGS

You will remember that at Cabinet before the recess you asked Chris Patten to consider how most effectively to overturn Lord Stanley's amendment, which the Lords accepted, setting up a dog registration scheme.

Chris Patten's proposals are:

- (i) to bring forward amendments to give effect to proposals to which the Government is already committed (eg action on stray dogs) and those on which it is currently consulting on the control of dogs (eg muzzling/banning certain dangerous breeds);
- (ii) to tidy up Lord Stanley's amendment so that the House of Commons at least debates a legally effective and workable amendment;
- (iii) to prepare a fall-back to allow local authorities to set up discretionary dog registration schemes.

If we lose in the House of Commons, then Lord Stanley's amendment (as tidied up) would become law. Chris Patten's proposal for a fall-back position, therefore, makes sense only in the context that we win in the Commons but the House of Lords again insists on the Stanley amendment and the fall-back would then be offered to prevent the Environment Protection Bill ping-ponging between Lords and Commons and possibly running out of time at the end of the overspill.

Comments from other Ministers betray a wide difference of views on:

- (a) the best business management tactics to secure our aims;

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- (b) how far the Government should bring forward now its proposals for action on strays and control of dogs (some of which put new burdens on local authorities);
- (c) the resource implications and wisdom of offering a fall-back position of discretionary dog registration schemes (Malcolm Rifkind suggests that the cost of this could be as high as £2½ million a year in Scotland alone).

I have discussed this with John Mills in the Policy Unit. We both agree that neither the papers nor the thinking is in any fit state to enable you to take a decision on the issues. We suggest, therefore, that the best course would be to invite the Lord President to chair a meeting next week of business managers and interested Ministers to knock issues into a fit shape from which sensible decisions can be taken.

Agree?

Yes not

If so, is there any steer you would want us to offer the Lord President? Two issues suggest themselves:

- No - subject to (ii) unless*
- (i) do you want at this stage to rule out further work on a discretionary registration scheme (even as a fall-back position)?
- Yes not*
- (ii) do you wish to suggest that any measures which involve extra burdens on local authorities should be both ring-fenced from the community charge and self-financing (with their costs falling exclusively on the dog owner rather than the general community)?

Would you wish me to minute out on those terms?

DM

DOMINIC MORRIS

13 September 1990

C:\wpdocs\parly\dogs (pmm)

12 September 1990

DOGS

A decision will be needed soon on the best strategy for overturning the Lords amendment to the Environmental Protection Bill which requires the Government to set up a national dog registration scheme.

There has been a round of Ministerial correspondence on this in the last month which has revealed considerable divergence of opinion on tactics. Chris Patten's starting proposals were:

- persuade the Lords to change their minds by further amendments on stray dogs: giving local authorities rather than the police the power to round up strays, and to charge for releasing strays from detention;
- negotiate with Lord Stanley to tidy up the drafting of his amendment so that, if not reversed, at least it would be in good shape;
- prepare a fallback: allowing local authorities to set up discretionary registration schemes.

This approach has come in for some criticism. Particular concerns have been:

- this is not the time to be imposing any new burdens on local authorities;
- the measures on strays are anyway very unlikely to persuade the Lords to change their mind;
- doubt as to whether to seek to overturn in the Lords, or try to do it in the Commons and then put the Lords on the spot;

- local registration schemes would be a bad compromise and a recipe for administrative confusion.

The papers on the table are not, in my view, in fit shape for the Prime Minister to take a considered view. The Cabinet Office is also of this view, and is I understand recommending to the Lord President that he should chair a group to sort out all the options.

This seems very sensible; what is at issue is as much Parliamentary strategy as policy on dogs. I would recommend the Prime Minister to support this approach.

There is however one point which I believe it would be very valuable for the Prime Minister to inject into the debate at this stage. This is that, if the Government is landed with a registration scheme against its better judgement, both the administration of the scheme and the enforcement which it generates (dog wardens, etc) should be ring-fenced from the community charge.

This is the only way to ensure that local authorities could not use registration as an excuse for raising community charges. It would also ensure that the cost burden of registration and dog control fell clearly on dog-owners and not, for example, on those who would rather there were no dogs around at all.

RECOMMENDATION

- Invite the Lord President to produce considered advice on overturning the Lords amendment and on fallbacks;
- in the event that registration is not overturned, further amendments should be introduced to ensure that its costs (administration and enforcement of dog control measures) are ring-fenced from the community charge. The Lord President's group should examine how best to do this.

John Mills
JOHN MILLS

K0278

FROM: A M RUSSELL
DATE: 12 SEPTEMBER 1990

LORD PRESIDENT

DOGS

The Secretary of State for the Environment minuted the Prime Minister on 2 August seeking colleagues' agreement to his proposals for handling the Government's defeat at Lords Committee Stage on dog registration. This minute recommends that you should re-convene the group of Ministers with whom you have discussed the matter on previous occasions, with a view to agreeing the advice which should be given to the Prime Minister. I understand that No 10 would be content for the matter to be handled in this way.

ISSUES FOR DISCUSSION

2. Mr Patten's proposal would involve:

- a. introducing new clauses at Lords Report Stage to implement the outstanding measures in the Action for Dogs package (duty on local authorities to deal with strays with a power to charge owners for retrieving their dogs from detention; and improving the existing collar and tag provisions).
- b. a commitment to legislating on the Control of Dogs package in due course, if appropriate in the light of consultation.
- c. making technical amendments to Lord Stanley's dog registration clause so that, in the event of it being passed, a workable registration scheme could be devised.

d. preparing a fall back position for a discretionary local authority registration scheme, should this prove necessary.

a. Action for Dogs

3. A number of colleagues have commented on the proposal to include the action for dogs package in the Environmental Protection Bill at Lords Report Stage. The Home Secretary and the Welsh Secretary support the proposal. The Financial Secretary has, however, questioned the wisdom of imposing additional costs on local authorities at the present time and has asked Mr Patten to provide more detail of the costs. (The Treasury and the DOE are currently negotiating a more rigorous procedure for keeping in check new burdens on local authorities, involving better quantification of costs by departments, and a willingness to give up the equivalent spending authority on central government programmes, and where appropriate off-setting savings, before policy approval is given.) The Secretary of State for Scotland has also pointed out the need to assess financial implications of the package for local authorities. He estimates that a Scotland-wide dog warden scheme alone would cost local authorities between £2.25 and £2.5 million.

4. Lord Belstead believes that the arguments against a registration scheme are right and should be relied upon to overturn Lord Stanley's amendment in the Commons. He considers that the Action for Dogs package is unlikely to deter their Lordships from pressing the registration issue, and that it might indeed be perceived as a sign that Government policy in this area is in disarray. He has suggested that in Parliamentary handling terms it might be better to hold back any compromise proposals until CCLA, to be inserted as amendments in lieu. It is not in any case clear that deferral to CCLA is an option open to Mr Patten. At CCLA and later stages of a Bill, an amendment must be "relevant" to an amendment made by the Lords in order to be admitted, and it seems questionable whether the Action for

Dogs measures would be considered relevant to a dog registration scheme amendment. We will arrange for the views of Parliamentary Counsel and the House Authorities to be sought.

5. The business managers' objective is to keep amendments to the Environmental Protection Bill to a strict minimum. If there seems no real prospect of the Action for Dogs proposals changing opinion in the Lords, or indeed in the Commons, on the registration amendment itself, the case for bringing the proposals forward seems weak. The financial arguments are strong. You may feel that there should be further discussion of the merits of implementing the package at the present time.

b. The Control of Dogs

6. There is wide agreement among colleagues that action on the Control of Dogs package should not be taken forward before the consultation period due to end in November has expired.

c. Technical amendments at Lords Report Stage

7. Colleagues are also content for technical amendments to be brought forward at Report stage to make Lord Stanley's registration clause workable should the House of Commons support it. Lord Belstead has stressed the need to ensure that Lord Stanley in particular understands that Government amendments would be contingent, and do not put into question their resolve to remove the substantive provisions from the Bill. You may feel it would be helpful to discuss with colleagues the precise nature of the deficiencies in the clause, so that the Government's position may be properly presented by all concerned.

d. Discretionary Local Authority Schemes

8. Lord Stanley's amendment would provide for a standard registration scheme throughout Great Britain, administered by local authorities, to be put in place by the Secretary of State by order approved by both Houses of Parliament (Copy at Annex A). Mr Patten's view, which he explained to Cabinet on 12 July, is

that a local authority-administered scheme would be acceptable only on a discretionary basis, with its costs ring-fenced to avoid increasing community charges. The Cabinet were not enthusiastic about the proposition, and agreed that for the time being the Government would concentrate its efforts on promoting the argument against dog registration; but they did not specifically rule out the preparation of a fall-back scheme.

9. In principle it seems sensible for Mr Patten and colleagues most closely involved to devise a suitable fall-back scheme, and his proposal has generally been sympathetically received on this basis. Mr Rifkind has, however, set out some telling arguments against the idea of local discretion. Specifically he is concerned about the likely effectiveness of piecemeal registration schemes, the financial implications for local authorities and their chargepayers, and the enforceability of schemes which do not apply across the board. It would certainly be worthwhile to probe Mr Patten further on his ideas, including why he believes that discretion is more important than consistency. A different fall-back position might be appropriate. If Parliament were to approve Lord Stanley's proposals, the balance of advantage might lie in accepting that registration should take place on a nationwide basis, but in using this, for example, to enable the proper enforcement of those of the Control of Dogs proposals which are based on breed identification. In implementing a nationwide scheme it would also be necessary to look at costs and the level of licence fees. Lord Stanley claimed that his scheme would save the Government money, because licence fees would cover not only the bureaucratic cost of the licensing system but also the cost of dog wardens etc.

TIMING

10. Lords Report Stage on the Environment Bill is programmed for the week beginning 8 October, and the Government have agreed to table amendments by 24 September. The matter will therefore need

to be sorted out in the next week to 10 days.

CONCLUSION

11. I think that the issues identified in this minute would be better resolved in discussion than in correspondence and I propose that you should reconvene the group of Ministers who have previously met under your chairmanship for this purpose. I attach a brief draft letter for your signature proposing this.



A M RUSSELL

DRAFT LETTER TO:

The Rt Hon Chris Patten MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB

DOGS

I refer to your minute of 2 August to the Prime Minister. The comments which colleagues have made reflect the difficulties we face on the substance of policy, financial implications and Parliamentary handling, and I propose that we should meet to resolve these issues and agree the advice to be given to the Prime Minister. Accordingly I propose to convene the group of colleagues who met most recently to consider the "Control of Dogs" consultation paper and my office will be in touch with yours and those of copy recipients to make the necessary arrangements.

It has been agreed that any Government amendments to the Environmental Protection Bill should be tabled by Monday 24 September, and we will therefore be looking for a date for the meeting in the course of next week. I should be grateful if, in preparation for the meeting, you would circulate any further information on costs necessary to meet the concerns expressed by Francis Maude in his letter of 8 August.

I am copying this to David Waddington, Kenneth Baker, Malcolm Rifkind, John Belstead, Peter Brooke, John Gummer, David Hunt, Patrick Mayhew, Tim Renton, Bertie Denham and to Sir Robin Butler and First Parliamentary Counsel.

GEOFFREY HOWE

(f) information obtained or furnished in pursuance of section 8(3), or (5) above; and

(g) such other matters relating to operations for which licences are needed under this Part of this Act as may be prescribed.

(2) No information shall be included in any register which, in the opinion of either of the Ministers, is such that its disclosure on the register—

- (a) would be contrary to the interests of national security, or
- (b) would prejudice to an unreasonable degree some person's commercial interests.

(3) Information excluded from a register by virtue of subsection (2)(b) above shall be treated as ceasing to prejudice a person's commercial interests at the expiry of the period of four years beginning with the date on which the Minister made his decision under that subsection; but, on the application of any person to whom it relates, the Minister shall decide whether the information should be included or continue to be excluded from the register.

(4) Where information of any description is excluded from a register by virtue of subsection (2)(b) above, a statement shall be entered in the register indicating the existence of information of that description.

(5) It shall be the duty of each licensing authority—

(a) to secure that the register maintained by the authority under this section is available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to member of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(6) Registers under this section may be kept in any form.

(7) In this section "prescribed" means prescribed in regulations.

(8) Either of the Ministers may exercise any power to make regulations under this section and any such power shall be exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament."

The noble Baroness said: In moving Amendment No. 377D, I shall speak also to Amendments Nos. 383BA, 398A and 402ZA. Amendment No. 377D is a technical amendment. Its purpose is to keep the provisions for public registers of information on the dumping of waste at sea, already in existence under the Food and Environment Protection Act 1985, in line with similar provisions for registers contained in Part 7 of the Bill. I apologise to your Lordships for its late arrival.

Amendments Nos. 383BA, 398A and 402ZA are consequential amendments following the introduction of the new clause. I beg to move.

On Question, amendment agreed to.

[Amendment No. 378 not moved.]

Clause 134 agreed to.

[Amendment No. 379 not moved.]

Lord Stanley of Alderley moved Amendment No. 379A:

After Clause 134, insert the following new clause:

("Dog Registration

(1) For the purpose of protecting the environment, the Secretary of State shall by order, in accordance with subsections (5) and (6) below, make provision for a scheme for the registration, identification and control of dogs.

(2) In making an order the Secretary of State shall provide, *inter alia*, for the scheme to be administered by local authorities, and for the fixing of registration fees, including such variations as may be prescribed, to be paid by the owners, or keepers of dogs to the relevant authorities.

(3) An owner or keeper of a dog who fails to register it or to ensure that it can be identified in accordance with regulations made under a scheme in accordance with this section shall be

guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) In performing their duties under this section, local authorities may enter such agreements with any person as may in their opinion facilitate the registration and identification of dogs.

(5) The Secretary of State shall not later than 12 months from the passing of this Act lay an order under this section before Parliament for approval in accordance with subsection (6) below.

(6) Any order made under this section shall be exercisable by statutory instrument and no order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(7) In this section "local authority", means in England and Wales a District Council, a London Borough Council or the Common Council, and in Scotland means a District or Island Council."

The noble Lord said: I should like to thank all noble Lords and the usual channels for ensuring that the debate on this amendment takes place at a reasonable hour of the day instead of the usual time of one o'clock in the morning.

I am sure that no Member of the Committee will be misled by the media, which suggests that this amendment is a great constitutional or party matter. It is not. It deals with the method of controlling our dogs. As for being a party matter, a similar amendment was defeated in another place by only 12 votes. Moreover, the Government are very anxious about the problem. Accordingly, last week they issued a consultative paper describing their preferred method. I say "preferred" because my honourable friend Mr. Heathcote-Amory indicated on Sunday that if the Committee decide that this amendment is a better way forward, then the Government will accept the Committee's decision.

Once again it is open to your Lordships to decide, without any political pressure, which way to vote. Should the Committee approve the amendment, it would be up to the Commons to give it its blessing. If it did so, there would be a period of one year before the Secretary of State would have to lay before Parliament an affirmative order giving precise details of the dog scheme. I purposely say "dog scheme" because although registration is an essential part of it, it is only a means to an end. That end is sound dog management.

During the year the Secretary of State will have to discuss the details of the scheme with all interested parties. However, I would be more than usually naive if I thought that the Chamber would let me get away without saying how some of the detailed problems concerning dogs could be tackled if the amendment were accepted.

The scheme could, and almost certainly would, provide compulsory third party insurance. The Government scheme does not do so. There would be opportunities for the private sector to operate the scheme by agreement with the local authority. It could provide for reduced fees for deserving cases; for instance, a reduction could be given for neutered or spayed dogs, guide dogs for the blind and indeed block registration for groups of dogs. Perhaps I may refer to the amendment of my noble friend Lord Mancroft on this matter. I hope I can put his mind at rest on this point by saying that I shall certainly



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CONFIDENTIAL

The Rt Hon Chris Patten Esq MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1P 3EB

6⁵ September 1990

Dear Secretary of State.

I have seen your minute of 2 August to the Prime Minister outlining contingency proposals following the Cabinet's decision to seek to overturn the recent Lords vote on dogs registration. I have also seen Francis Maude's letter of 8 August and I have considerable reservations about both the efficacy and the implications of what you are suggesting.

Although our "Action on Dogs" package won a large measure of support, the financial implications for authorities were a real cause for concern and it is a concern I share, especially in view of our desire to avoid imposing new financial burdens on authorities because of the possible implications for community charge levels. We should face considerable criticism if we rush to introduce these measures without addressing adequately the implications for local authority expenditure, particularly if we continue to resist the introduction of a registration scheme which, our opponents would argue, could resolve the resources question. I, therefore, agree with Francis that we need to consider carefully the question of costs before we decide whether to offer this package as an alternative to the Lords' amendment or seek to overturn the amendment. For example we estimate that a Scotland-wide dog warden scheme would cost authorities some £2.25 million to £2.5 million. In addition there will be other costs, such as kennelling.

Like David Waddington, I doubt the wisdom of giving a commitment to early legislation on our "Control of Dogs" paper at a time when we shall still be consulting, particularly when the range of options considered in that paper is so wide-ranging, from the relatively non-controversial to the radical. As you already know, I shall also want to take full account of what my own Working Group on Dogs has to say in its report which will not be available before the end of the year.

I can understand why you would wish to correct the technical deficiencies of the present registration clause in case we are left with having to implement it and I agree that we need a fall-back position if the Lords or the Commons prove obdurate. In that event I would want to ensure that

any registration scheme or schemes in Scotland were run on sensible and comparable lines with clearly defined limits on local discretion. Piecemeal and inconsistent schemes would only compound present difficulties in addressing dog-related problems effectively and would cause great confusion amongst the general public.

In short, therefore, I think we need to be robust in seeking to overturn the Lords' amendment without committing ourselves at this stage to measures which would be construed as a new burden for authorities and on some of which we have not secured agreement. If we fail to overturn the Lords' amendment then we need to ensure that local registration schemes actually work and are operated on sensible and consistent lines.

I am copying this letter to the Prime Minister, to other members of the Cabinet, to Bertie Denham and Sir Robin Butler.

Yours sincerely,
Len Wright

PP MALCOLM RIFKIND

(Approved by the Secretary
of State and signed in
his absence)



Handwritten initials/signature

FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

Dear Chris,

4 September 1990

DOGS

Handwritten signature/initials

Your letter of 2 August to the Prime Minister canvassed the handling implications of the decision taken in Cabinet to overturn the recent Lords' vote on dog registration.

If the consultation paper "Action on Dogs" can only be enacted by means of Government amendments to the Environmental Protection Bill on Report in the Lords, then clearly these amendments will have to be moved at that stage if they are to be used as a counter-argument to a national registration scheme.

I would however prefer that, if possible, these amendments - or an appropriate portion of them - be kept to Consideration of Lords' amendments in the Commons, and then introduced as amendments in lieu of the Lords' amendment introducing the national registration scheme. This would make handling in the Lords easier when the Bill returns with Lord Stanley's amendment reversed; and I would have thought there might be handling advantages in the House of Commons also. The feasibility of this option however depends on Parliamentary Counsel's advice - and the advice of the House authorities in the House of Commons, no doubt - as to whether these amendments could be taken as amendments in lieu.

Otherwise I believe we are facing an unnecessary political difficulty. One set of arguments against the national registration scheme has already been advanced in the House of Commons and in the House of Lords in Committee. The implementation of the "Action on Dogs" on Report in the Lords will almost inevitably come to be seen as a bribe against the scheme, as it were. If, then, the fallback of a local voluntary scheme had to be conceded in the House of Commons, when the Bill returned to the Lords the Lords would in effect be hearing the third set of arguments that the Government had advanced against the national registration scheme. That very abundance of Government ideas would, I would suggest, reinforce supporters of the national registration scheme in their belief that that was the only credible solution, and indeed that Government policy was in some disarray. I do not believe that the latter is the case: it seems to me that we have a clear line, and the right line. The problem is the tactical one of giving away as little as possible as late as possible.

There remains the question of tidying up Lord Stanley's amendment. I believe this should be done, but it will have to be carefully negotiated with Lord Stanley so that he is under no illusion that it is being done in order to send a workable piece of legislation to the House of Commons, and is without prejudice to the House of Commons' decision on the fate of his substantive proposal.

I am copying this to the Prime Minister and other Cabinet colleagues, to Bertie Denham and to Sir Robin Butler.

Yours sincerely,
Chris Patten
BELSTEAD

The Rt Hon Christopher Patten MP
Secretary of State for the Environment

cts



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Oddi wrth Ysgrifennydd Gwladol Cymru

The Rt Hon David Hunt MBE MP

From The Secretary of State for Wales

3rd September 1990

Dear Chris

File with CAS

Thank you for copying me your minute of 2 August to the Prime Minister about the handling of the dog registration clause in the Environmental Protection Bill.

I agree with the introduction of the "Action on Dogs" proposals at Lords' Report Stage.

I agree with David Waddington (his letter of 17 August) that it would be premature to give a commitment on the basis of "Control of Dogs" before the expiry of the consultation period on 15 November.

I am content with your proposals, as a contingency expedient, to rectify the technical deficiencies in the present registration clause, and although I would not welcome the introduction of discretionary local registration schemes, I agree that it would be prudent to make appropriate provision in case it is necessary to secure the Bill's passage. I do attach some importance to ensuring that any such schemes would be self-financing.

Yours ever

The Rt Hon Christopher Patten MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW1

Copies of this letter to the Prime Minister and other Cabinet colleagues, to Lord Penhryn and to Sir Robin Butler.



10 DOWNING STREET

Duty Clerk

John Mills
is going
to advise
Boris Finsch
when he
dres

CS

Can you ask NOG

← when (X) below
FST to
SS/ENV
8.8.90 will arrive. The PM
needs it before
taking a decision.

CS

28/8

Caroline

SS/Env still on holiday

Few departments have
replied ∴ Likely to be
another 2 weeks.

Mark
27.8.90

~~CONFIDENTIAL~~

ccp



QUEEN ANNE'S GATE LONDON SW1H 9AT

17 August 1990

Dear Secretary of State

DOGS

map

Thank you for copying to me your minute of 2 August to the Prime Minister.

I agree with you that there are advantages in introducing the "Action on Dogs" proposals into the Environmental Protection Bill at Lords Report and that this would clearly reinforce the case for resisting a national registration scheme.

Whilst there might be attractions in giving a forward commitment to legislation in October, the consultation period for "The Control of Dogs" paper was deliberately set to end on 15 November so as to be after Commons consideration of Lords amendments on the Environmental Protection Bill, and it will still have another fortnight to run.

I think this precludes us giving a commitment to further legislation as we would be open to the charge that our mind was already made up and the consultation process was insincere. But there is, of course, nothing to stop us drawing attention to the fact that we have produced proposals in the consultation paper which seem to us to have greater merit than registration.

In his letter to you of 8 August, Francis Maude raised the question of the cost of the current proposals. I am happy to confirm that, as far as the Home Office's proposals are concerned (Part I of "The Control of Dogs" consultation paper), we still consider the cost of these to be nil.

Copies of this letter go to the Prime Minister and other Cabinet colleagues, to Lord Denham and to Sir Robin Butler.

Yours sincerely
Sir David

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE

The Rt Hon Christopher Patten, MP.
Secretary of State for the Environment
2 Marsham Street
LONDON, S.W.1.

~~CONFIDENTIAL~~

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CONFIDENTIAL



Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Chris Patten MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

8th August 1990

Dear Secretary of State,

DOGS

You sent Norman Lamont a copy of your minute of 2 August to the Prime Minister. I am responding his in absence.

It is for others to reach a judgement as to whether the proposals you make will be necessary if we are to be successful in our attempt to overturn the House of Lords amendment. But we must assess very carefully the implications for local authority expenditure of the measures you outline.

You wrote to Geoffrey Howe on 23 July drawing attention to the need to keep additional demands on local government to the absolute minimum, to avoid undue burdens on community chargepayers. We share your concern. This is of course a reason for seeking to overturn the Lords amendment.

It was estimated that the proposals included in the consultation paper "Action on Dogs" would amount to no more than the equivalent of 40p on the average community charge. I accept that this is a small amount but lots of small increases in expenditure can build up to a substantial sum. In any event, your compromise proposal of a discretionary registration scheme would have further resource implications which you do not quantify.

I think it would be helpful if you would provide colleagues with your current estimate of the cost of these proposals before a decision is taken on whether to offer them as an alternative to the Lords amendment, or simply to seek to overturn the latter.'

(X)

- with CAS?

CONFIDENTIAL

fst.sb/Maude/8.8.90.5

CONFIDENTIAL



I am sending copies of this letter to the Prime Minister and other members of the Cabinet, to Bertie Denham and to Sir Robin Butler.

Yours sincerely,

Philip Rutnam

PP FRANCIS MAUDE

(Approved by the
Financial Secretary
and signed in his
absence.)

CONFIDENTIAL

CONFIDENTIAL

ceplu



PRIME MINISTER

DOGS

We agreed at Cabinet that we should seek to overturn the recent Lords vote on dog registration at the CCLA stage of the Environmental Protection Bill. (Lords Report stage will be in October followed by Commons Consideration of Lords Amendment.)

This minute seeks your and colleagues' comments on the implications of this decision for handling the Bill and the contingent action that we may have to take.

Our Proposals - Action on Dogs

We issued a consultation paper last summer - "Action on Dogs" - proposing:

- the transfer of the duty to deal with strays from the police to local authorities
- giving local authorities power to make a specific charge on owners seeking to collect their dogs from detention
- clarifying and improving enforcement of the existing requirement for dogs to wear a collar and identification tag in public.

We could introduce these measures (probably not more than 6 clauses) into the Bill at Lords Report. They would strongly reinforce our case for resisting a national registration scheme.

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The Control of Dogs

We have recently issued a further consultation paper - "The Control of Dogs" - which proposes dog control measures over and above the Action on Dogs package. These include creating an offence of allowing a dog to stray and introducing a fixed penalty for failure to display an identification tag.

The consultation period on this paper ends in November. We could then seek a legislative opportunity to introduce some of these further measures.

Technical Deficiencies in the Existing New Clause

According to lawyers, Lord Stanley's dog registration amendment is technically defective. In the perhaps unlikely event of the amendment becoming law, it would be impossible for me to make the regulations for any workable registration scheme. It would therefore be prudent to take steps to see that Lord Stanley put the amendment into terms which at least make it workable whilst making clear our determination to overturn it. Our sole objective would be to ensure that if the unthinkable happened, bad law would not reach the statute book.

Preparation of a Compromise Position

I have described how we might proceed with our own set of measures. But we have to consider the case that the Lords will insist on their amendment, with the resulting loss of the Environmental Protection Bill in this Session. I do not believe that this will happen but, again, it makes sense to prepare a fallback position.

This would comprise a discretionary registration scheme which would be run and funded by voluntary groups and local authorities. This remains in my view the most tenable compromise position - and the least that is likely to meet the aspirations of the supporters of registration.

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CONCLUSIONS

I would be grateful for agreement from colleagues, as soon as possible, that we should:

- a. introduce the "Action on Dogs" package of measures at Lords Report reinforced by the "Control of Dogs" package in due course; or failing that
- b. give a commitment at CCLA to early legislation on our proposals;
- c. seek to amend at Lords Report the technical deficiencies of the present registration clause whilst making clear our opposition to it in principle;
- d. prepare a compromise provision for a discretionary local registration scheme, should this prove necessary.

I am copying this to Cabinet colleagues, to Bertie Denham and to Sir Robin Butler.

CEJ Bush

PP CP

2 August 1990

(Approved by the Secretary of State
and signed in his absence)

CONFIDENTIAL



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

c: /parli/
dogs
(kw)
cc Policy Unit
M

24 July 1990

DOG BYELAWS REVIEW

Thank you for your letter of 23 July to Caroline Slocock. As I mentioned on the telephone, the Prime Minister is content with the Home Secretary's proposals, noting that you are seeking further advice on the best time and manner of their announcement.

I am copying this letter to Gillian Baxendine (Lord President's Office), Kate Bush (Department of the Environment), Michael Harrison (Ministry of Agriculture, Fisheries and Food), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Murdo Maclean (Chief Whip's Office), Robert Canniff (Office of the Chancellor of the Duchy of Lancaster), Gillian Kirton (Lord Privy Seal's Office), Douglas Slater (Government Whip, Lords), Juliet Wheldon (Law Officers' Department) and Sonia Phippard (Cabinet Office).

DOMINIC MORRIS

Ms. Sara Dent,
Home Office

A. J. Dent



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

23 July 1990

Dear Carbine

DOG BYELAW REVIEW *leap*

Thank you for your letter of 25 June in which you indicate that the Prime Minister is content with the proposed extension of the availability of the 'poop-scoop' byelaws but that she would like changes to the policy on dogs on leads and dog ban byelaws.

As you may know, Mr Lloyd has since discussed the byelaw review with Mr Mills from the No 10 Policy Unit and other officials. The Prime Minister's suggestions have been ... carefully considered and I enclose a paper setting out revised proposals. Mr Lloyd would hope to announce the outcome of the review by way of an Arranged Parliamentary Question, preferably before the recess, if agreement can be reached in ... time to table the question on Tuesday 24 July. A copy of the proposed draft Answer is enclosed. The Home Secretary would not favour an announcement by way of a press notice during the recess.

I am copying this letter to Gillian Baxendine (Lord President's Office), Kate Bush (Department of the Environment), Michael Harrison (Ministry of Agriculture, Fisheries and Food), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Murdo Maclean (Chief Whip's Office), Robert Canniff (Office of the Chancellor of the Duchy of Lancaster), Gillian Kirton (Lord Privy Seal's Office), Douglas Slater (Government Whip, Lords), Juliet Wheldon (Law Officers' Department) and Sonia Phippard (Cabinet Office).

Jans
Suz

MS S J DENT

C Slocock Esq
10 Downing Street
LONDON SW1

HOME OFFICE DOG BYELAW REVIEW

GENERAL CONSIDERATIONS

(a) Judicial Constraints

Unlike general legislation byelaws must be confirmed by the Secretary of State and their validity may be challenged in the courts, which have established stringent rules as to validity. Byelaws must be within the power of (intra vires) the enabling legislation; not repugnant to the general law; and not uncertain or unreasonable. A byelaw may be found to be unreasonable if it is partial and unequal, manifestly unjust or unjustifiably interferes with individual rights. Both the local authority, which makes the byelaw, and the Secretary of State as the confirming authority are vulnerable to judicial review if they fail to satisfy that these criteria are met in any particular case.

2. Because byelaws create criminal offences the local authorities must be able to give a reason which justifies the extension of the criminal law in this way. It is doubtful whether there is power to make byelaws which are unnecessary. The need for the measures must be demonstrated both to local residents and to the Secretary of State as confirming authority. Of course, in general, local authorities are best placed to establish local needs in the light of consultations and so the Secretary of State will usually be able to satisfy himself on the basis of local authority advice.

(b) Policy Considerations

3. When establishing broad policy guidelines for local authorities to follow when preparing their byelaw applications, the Home Secretary considers that it is important to encourage councils to adopt measures which strike a balance between those who wish to use public areas which are free from dog mess and sometimes free from dogs and those who wish to exercise their pets off the lead at sometime during the day. Where this balance lies in a particular case will vary according to local circumstances.

4. In general, responsible dog owners appear to have accepted the case for requiring dog faeces to be removed from the environment but they are likely to strongly oppose overly restrictive measures for dog ban areas and dogs on leads. If owners found that they had nowhere to exercise their dogs off the lead reasonably near their homes, this could well rebound politically - resulting in a wave of sympathy for dog owners, and a wide disregard of the law. And also the byelaws could be rejected by the courts as unreasonable. Any shift in the balance of our approach to dog control byelaws which is perceived as going too far in a restrictive direction is likely to be resisted by the pro-dog lobby which is also in favour of dog registration.

BYELAW PROPOSALS

5. Our aim is to provide local authorities with building blocks to devise their own local schemes for dog control. Councils will be able to choose the combination of measures which meets the needs of their particular area.

'Poop-Scoop'

6. At present, the 'poop-scoop' byelaw is available for parks, recreation grounds and open spaces where there is an

alternative area; any children's playground and sportsground; beaches and promenades in the summer season; trunk road picnic sites and picnic areas in country parks. Our original proposals were to extend the byelaws to all parks and recreation grounds without the need for alternative areas; pavements and ornamental grass verges adjacent to carriageways; footpaths in urban areas not adjacent to carriageways and any pedestrianised areas which are owned by the local authority such as shopping precincts.

7. After further consideration, we also propose to extend 'poop-scoop' byelaws to beaches and promenades all year round and to gutters in built-up areas. We consider that it would be too dangerous, both to traffic and to the pet owner to require them to remove dog faeces from the carriageway itself. But in order to prevent transfer of the problem from the gutter to the carriageway and to deter owners from permitting their pets to foul a highway, which is in itself hazardous, it is proposed to make the 'no fouling' byelaw available to be applied to carriageways in urban areas.

8. Camping sites and motorway rest areas will almost invariably be privately owned or leased. We understand that the local authority duty to clear up litter will not extend to such areas and the local authority would not have power to make byelaws. Those operating these areas will be able to apply their own regulations to control dogs.

Dogs on leads

9. At present, local authorities may make byelaws to require dogs to be kept on the lead at all times in parks and recreation grounds where, as with all byelaws, a need can be demonstrated. Such areas include ornamental gardens, children's play areas and bowling greens; promenades adjacent to beach ban areas during the summer months and areas where the disturbance of wildlife is a consideration.

10. As indicated earlier, a local authority must have a reason for making a byelaw. But, bearing in mind that dog owners may reasonably expect to exercise their dogs off the lead at least once, if not twice a day, we would normally expect the local authority to determine the extent of a dogs on leads byelaw after local consultation.

11. In order to facilitate a more flexible approach, we agree with the Prime Minister's proposal that an additional model byelaw should be made available. This would provide that dogs should be kept on leads in parks and recreation grounds at certain times of the day. A model byelaw has been developed for this purpose. It would be for the local authorities to devise a scheme which balanced the needs of the various sections of their community. Different times could be applied in different parks.

12. We have noted the Prime Minister's concern over the effectiveness of our proposed new byelaw which would enable council officers to ask for a dog to be kept on a lead where it is necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance. A variation of this byelaw was developed for use in a National Park and we considered that it could serve as a useful tool in such areas. Therefore we would wish to offer this to local authorities as an option to be used if they chose.

13. The Prime Minister also suggests that there should be a new byelaw to require muzzles for dogs or perhaps just potentially dangerous dogs, when off the lead. The muzzling of dangerous dogs is dealt with under the Town Police Clauses Act 1847. A byelaw to the same effect would be ultra vires since provision for the same purpose already exists. Thus any byelaw could only apply to dogs which were not dangerous. Our advice is that it is likely that such a byelaw would be struck down by the courts as unreasonable.

14. The consultation document on the 'Control of Dogs' canvasses views on various muzzling requirements and this

topic will be considered later in the year in the light of responses received.

Dogs on Leads - Highways Orders

15. It has been suggested that the order-making procedure under the Road Traffic Act 1988 requiring dogs to be kept on leads is too cumbersome and it should be replaced by byelaws. However, the legislation precludes the making of byelaws for highways while other powers exist to control the same nuisance. Thus while the Road Traffic Act provisions remain, there is no power to make byelaws on this topic. Primary legislation would be needed to repeal the Road Traffic Act provisions. In any event, we are not convinced that a byelaw-making power is the most effective way of dealing with this. In theory, byelaws on one subject made by different local authorities can each have a different wording. It is not possible ultimately to insist on byelaws conforming to model wordings. A national provision imposing a dogs on leads requirement for all roads subject, say to the 30 mile an hour speed limit, would remove both local and central government from the need to be involved in making a series of individual local measures. An alternative might be to simplify the present order-making procedure and devolve it to District Councils. Again these would minimise central government's role. My officials are discussing this issue with the Departments of Transport and the Environment to establish the best way forward.

Dog Bans

16. At present, local authorities may make byelaws which prohibit dogs from entering designated enclosed grounds; enclosed parts of unenclosed grounds (children's play areas, bowling greens etc) and parts of beaches during the summer season (May-September).

17. We have carefully considered the Prime Minister's suggestion that local authorities should be able to ban dogs from certain public places except specially designated areas of parks or similar areas. However, a reversal of policy which could result in dogs being banned from all the parks at all times in a particular area is likely to be regarded as oppressive by dog owners and could well be struck down by the courts as unreasonable. But we have concluded that a model byelaw imposing a time limited ban which could be applied to open as well as enclosed parks, would enable local authorities to devise a scheme which could balance the needs of all the various sections of the community. As with the dogs on leads time limit byelaw, the times could vary from one park to another in one area to allow those with dogs and those who wish to avoid them, to use the facilities at different times. In addition, we have developed a new model byelaw which would enable local authorities to ban dogs from enclosed parks, apart from a specially designated enclosed exercise area. The owners would be required to take their dogs on a lead from the park entrance to and from the exercise area.

Public Housing Estates - Byelaws for Amenity Greens

18. The Department of the Environment has responsibility for byelaws for amenity greens in public housing estates and we understand that it has been agreed that the full range of dog byelaws should be available to housing authorities for public housing estates and amenity greens.

19. We agree that it would be preferable for dog byelaw applications to be dealt with by one Government Department, in order to ensure consistency in policy. But we consider that this topic is more appropriate to the Department of the Environment in view of their responsibilities for the new duty on local authorities to clear up litter, including dog faeces. Also, in this particular instance, the Home Office has no expertise in other regulations which apply to public housing estates and which would have to be taken into account when

developing policy in this area. The question of a transfer of these responsibilities to the Department of the Environment was raised, in fact, by Home Office Ministers with that Department last autumn. We propose to discuss this further with them.

20. The new model byelaws are annexed to this paper.

BLW/90 1/41/1

Home Office

July 1990

I. MODEL 'POOP-SCOOP' BYELAW FOR FOOTWAYS, FOOTPATHS AND PEDESTRIANISED AREAS.

REMOVAL OF CANINE FAECES

Byelaws made by the Council of.....
under section 235 of the Local Government Act 1972 for the
good rule and government of the Borough/District of.....
and for the prevention and suppression of nuisances.

EXTENT

1(1) These byelaws apply [throughout the Borough/District of
...../to specified parts of the Borough/
District of] to:

- (a) any footway or footpath maintainable at the public expense [excluding footpaths not adjacent to highways provided by the local housing authority in connection with houses, under section 12 of the Housing Act 1985]; and
- (b) any grass verge managed by the local authority and maintained in good order and which is adjacent to any carriageway or footway of any highway [and
- (c) the pedestrianised areas designated in the Schedule to these byelaws.]

(2) Notice of the effect of these byelaws shall be given by signs placed in such position as the Council may consider adequate to inform persons using the footways/footpaths

[and]/grass verges/[and pedestrianised areas] specified in paragraph (1) above.

INTERPRETATION

2(1). In these byelaws:

'carriageway' means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

'The Council' means the.....

'footpath' means a highway over which the public have a right of way on foot only, not being a footway;

'footway' means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

'highway' means the whole or part of a highway other than a ferry or waterway.

(2) For the purpose of these byelaws the keeper of the dog shall be deemed in charge thereof, unless at the time when the dog fouled the footpath/footway/grass verge/pedestrianised area, it had been placed in or taken into the charge of some other person.

(3) In paragraph (2) above 'the keeper' shall include the owner of a dog or any person who habitually has it in his possession.

REMOVAL OF CANINE FAECES

3. Every person in charge of a dog (other than a registered blind person in charge of a dog) which is on the footpath, [and] grass verge [and pedestrianised areas] who, without

reasonable excuse, fails to remove forthwith from the footpath, footway, grass verge [and pedestrianised areas] any faeces deposited by the dog shall be guilty of an offence.

4. For the purpose of compliance with byelaw 3, without prejudice to the generality of the foregoing it shall not be a reasonable excuse that a person in charge of a dog did not have with him any means of removal of the faeces.

PENALTY

5. Any person offending against byelaw 3 shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

REVOCATION

6. The byelaws [Byelaw No of the byelaws] made by on in respect of dogs fouling footways [and grass verges] are hereby revoked.

SCHEDULE

II MODEL 'POOP-SCOOP' BYELAW FOR GUTTERS

Byelaws made by the Council of
under section 235 of the Local Government Act 1972 for the
good rule and government of the Borough/District of
and for the prevention and suppression of nuisances.

EXTENT

1(1) These byelaws apply [throughout the Borough/District of
..... to roads subject to a 30 mph speed limit/to
specified parts of the Borough/District of, being
roads which are subject to a 30 mph speed limit] to that part
of the carriageway of a highway which forms the gutter.

(2) Notice of the effect of these byelaws shall be given by
signs placed in such position as the Council may consider
adequate to inform persons using the gutters specified in
paragraph (1) above.

INTERPRETATION

2(1) In these byelaws:
'carriageway' means a way constituting or comprised in a
highway, being a way (other than a cycle track) over which the
public have a right of way for the passage of vehicles;
'the council' means the
'highway' means the whole or part of a highway other than a
ferry or waterway.

(2) For the purpose of these byelaws the keeper of the dog
shall be deemed in charge thereof, unless at the time when the

dog fouled the gutter, it had been placed in or taken into the charge of some other person.

(3) In paragraph (2) above 'the keeper' shall include the owner of a dog or any person who habitually has it in his possession.

REMOVAL OF CANINE FAECES

3. Every person in charge of a dog (other than a registered blind person in charge of a dog) which is in the gutter who, without reasonable excuse, fails to remove forthwith from the gutter any faeces deposited by the dog shall be guilty of an offence.

4. For the purpose of compliance with byelaw 3 the following provisions shall apply:

- (a) it shall be a sufficient removal from the gutter if the faeces are deposited in a receptacle which has been provided for that purpose by the Council;
- (b) without prejudice to the generality of the foregoing it shall not be a reasonable excuse that a person in charge of a dog did not have with him any means of removal of the faeces.

PENALTY

5. Any person offending against byelaw 3 shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

SCHEDULE

III MODEL 'NO FOULING' BYELAW FOR CARRIAGEWAYS

Byelaws made by the Council of
under section 235 of the Local Government Act 1972 for the
good rule and government of the Borough/District of
and for the prevention and suppression of nuisances.

EXTENT

1(1) These byelaws apply [throughout the Borough/District of
.....to roads subject to a 30 mph speed limit/to specified
parts of the Borough/District of, being roads
which are subject to a 30 mph speed limit] to that part of a
highway which forms the carriageway but excluding the gutter.

(2) Notice of the effect of these byelaws shall be given by
signs placed in such a position as the Council may consider
adequate to inform persons using the carriageway as specified
in paragraph (1) above.

INTERPRETATION

2(1) In these byelaws:

'carriageway' means a way constituting or comprising a highway
being a way (other than a cycle track) over which the public
have right of way for the passage of vehicles;

'the Council' means the

'highway' means the whole or part of the highway other than a
ferry or waterway.

(2) For the purpose of these byelaws the keeper of the dog
shall be deemed in charge thereof, unless at the time the dog
fouled the carriageway, it had been placed in or taken into
the charge of some other person.

(3) In paragraph (2) above 'the keeper' shall include the owner of a dog or any person who habitually has it in his possession.

DOGS FOULING THE CARRIAGEWAY

3. Every person in charge of a dog (other than a registered blind person in charge of a dog) who permits the dog to foul a carriageway, but excluding that part which forms the gutter, by depositing its faeces thereon shall be guilty of an offence.

Provided that in proceedings for an offence against this byelaw it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

PENALTY

4. Any person offending against byelaw 3 shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

SCHEDULE

IV MODEL BYELAW FOR DOGS ON LEADS (2)
TIME LIMITS FOR PLEASURE GROUNDS AND OPEN SPACES

Byelaws made by the Council of.....
under [section 164 of the Public Health Act 1875/sections 12
and 15 of the Open Spaces Act 1906/section 15 of the Open
Spaces Act 1906/.....] with respect to [public
walks/pleasure grounds/open spaces/].

[EXTENT]

1(1) These byelaws apply to the [public walks/pleasure
grounds/open spaces/] named in the Schedule and
hereafter referred to as 'the grounds'.

(2) Notice of the effect of these byelaws shall be given by
signs placed in conspicuous positions in or near each of the
grounds.

2(1) In these byelaws:

'The Council' means the Council of

(2) For the purpose of the byelaw the keeper of the dog
shall be deemed in charge thereof, unless at the time when the
dog was present in the grounds without being held on a lead at
a time when it was required to do so, it had been placed in or
taken into the charge of some other person.

(3) In paragraph (1) above 'the keeper' shall include
the owner of the dog or any person who habitually has it in
his possession.

DOGS ON LEADS

3(1) No person in charge of a dog (other than a registered blind person in charge of a dog) shall, without reasonable excuse, permit the dog to enter the ground on the days and during the hours specified in the following table, unless the dog is held on a lead and is restrained from behaviour giving reasonable grounds for annoyance.

<u>Name of ground</u>	<u>Time of Year</u>	<u>Days</u>	<u>Hours</u>
	(eg April-October and November-March)	eg Saturdays Sundays, Bank Holidays, Monday- Friday	

(2) The Council may, by resolution, vary these days and hours in specified cases or generally.

REMOVAL

* [4. Any person offending against these byelaws may be removed from the grounds by an officer of the council or any constable.]

PENALTY

5. Any person offending against byelaw 3(1) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

REVOCATION

6. The byelaws [byelaw No ... of the byelaws] made by on in respect of the grounds are [is] hereby revoked.

SCHEDULE

* This byelaw is not available for country parks, picnic sites, the seashore, promenades or some common land.

V MODEL BYELAW FOR DOGS ON LEADS (3)
PLEASURE GROUNDS AND COUNTRY PARKS/NATIONAL PARKS ETC

Byelaws made by the Council of.....
under [section 164 of the Public Health Act 1875/sections 12
and 15 of the Open Spaces Act 1906/section 15 of the Open
Spaces Act 1906/...] with respect to [public walks/pleasure
grounds/open spaces/...]/[...(insert enabling power)...] with
respect to [... (insert description of area)...].

EXTENT

1(1) These byelaws shall apply to [public walks/pleasure
grounds/open spaces named in the Schedule and hereafter
referred to as 'the grounds'/] [(insert description of
area)... hereafter referred to as 'the land'].

(2) Notice of the effect of these byelaws shall be given by
signs placed in conspicuous positions [in or near each of the
grounds/on or at the entrances to the land].

INTERPRETATION

2(1). In these byelaws:

'the Council' means the Council of

- (2) For the purpose of these byelaws the keeper of the dog shall be deemed in charge thereof, unless at the time when a dog was present in the grounds/on the land it had been placed in or taken into the charge of some other person.
- (3) In paragraph (2) above 'the keeper' shall include the owner of the dog or any person who habitually has it in his possession.

DOGS ON LEADS

- 3(1) Every person in charge of a dog in the grounds/on the land shall, as far as reasonably practicable comply with a direction given by [a Council officer or constable/...] to keep the dog on a lead.
- (2) A direction under paragraph (1) above may only be given if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any person in the grounds/on the land or the worrying or disturbance of any animal or bird.

PENALTY

4. Any person offending against byelaw 3(1) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

VI MODEL BYELAW FOR DOGS PROHIBITED FROM THE GROUNDS (2)
TIME LIMITS FOR PLEASURE GROUNDS AND OPEN SPACES

Byelaws made by the Council of
under [section 164 of the Public Health Act 1875/sections 12
and 15 of the Open Spaces Act 1906/section 15 of the Open
Spaces Act 1906/]
with respect to [public walks/pleasure grounds/ open
spaces/.....].

EXTENT

1(1) These byelaws apply to the [public walks/pleasure
grounds/open spaces/] named in the Schedule and
hereafter referred to as 'the grounds'.

(2) Notice of the effect of these byelaws shall be given by
signs placed in conspicuous positions in or near each of the
grounds.

INTERPRETATION

2(1) In these byelaws:

'the Council' means the Council of

(2) For the purpose of these byelaws the keeper of the dog
shall be deemed in charge thereof, unless at the time when the
dog entered or remained in the grounds at a time when it was
prohibited from doing so, it had been placed or taken into the
charge of some other person.

(3) In paragraph (2) above 'the keeper' shall include the owner of the dog or any person who habitually has it in his possession.

DOGS IN THE GROUNDS

3(1) No person in charge of a dog, (other than a registered blind person in charge of a dog) shall, without reasonable excuse, permit the dog to enter or remain in the grounds on the days and during the hours specified in the following table:

<u>Name of ground</u>	<u>Time of Year</u>	<u>Days</u>	<u>Hours</u>
	(eg April- October and November-March)	Saturdays, Sundays, Bank Holidays, Monday-Friday	

(2) The Council may, by resolution, vary these days and hours in specified cases or generally.

(3) An officer of the Council or any constable may require any person in charge of a dog which has entered the ground when this is prohibited to remove a dog from the grounds.

* [4. Any person offending against these byelaws may be removed from the ground by any officer of the council or any constable.]

PENALTY

5. Any person offending against byelaw 3(1) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

REVOCATION

6. The byelaws [byelaw No ... of the byelaws] made by
on in respect of the grounds are [is] hereby
revoked.

SCHEDULE

* This byelaw is not available for country parks, picnic
sites, the seashore, promenades or some common land.

VII MODEL BYELAW FOR DOGS PROHIBITED FROM THE GROUNDS (3)
DOG EXERCISE AREAS

Byelaws made by the Council of
under [section 164 of the Public Health Act 1875/sections 12
and 15 of the Open Spaces Act 1906/section 15 of the Open
Spaces Act 1906] with respect to [public walks/pleasure
grounds/open spaces/].

EXTENT

1(1) These byelaws apply to the [public walks/pleasure
grounds/open spaces/.....] named in the Schedule and
referred to hereafter as 'the grounds'.

(2) Notice of the effect of these byelaws shall be given by
signs placed in conspicuous positions in or near each of the
grounds.

INTERPRETATION

2(1) In these byelaws:

'the Council' means the Council of

(2) For the purpose of these byelaws the keeper of the dog
shall be deemed in charge thereof, unless at the time when the
dog entered or remained in the grounds it had been placed or
taken into the charge of some other person.

(3) In paragraph (2) above 'the keeper' shall include the
owner of the dog or any person who habitually has it in his
possession.

DOGS IN THE GROUNDS

3(1) Subject to paragraph (2) below, no person (other than a registered blind person) in charge of a dog shall without reasonable excuse permit that dog to enter or remain in the grounds, unless:

- (a) the dog is within an enclosed area in the grounds designated by the Council for the purpose of the exercise of dogs; or
- (b) the dog is being taken on a direct route between an entrance to the ground and that area for the purpose of either entering that area or leaving the grounds.

(2) Sub-paragraph (b) above shall only apply where the dog is being held on a lead and is restrained from behaviour giving reasonable grounds for annoyance.

REMOVAL OF CANINE FAECES

4. Every person in charge of a dog (other than a registered blind person) in charge of a dog) which is within an enclosed area in the grounds designated by the Council for the purpose of the exercise of dogs who, without reasonable excuse, fails to remove forthwith from the enclosed dog exercise area any faeces deposited by the dog shall be guilty of an offence.

5. For the purpose of compliance with byelaw 4, without prejudice to the generality of the foregoing it shall not be a reasonable excuse that a person in charge of a dog did not have with him any means for the removal of faeces.

REMOVAL

6. Any person offending against these byelaws may be removed from the grounds by any officer of the Council or any constable.

DOG BYELAW REVIEW: DRAFT ANNOUNCEMENT

Question

To ask the Secretary of State for the Home Department if he will make a statement on his review of model byelaws for the regulation of dogs in the light of comments received in response to the Department of the Environment consultation document 'Action on Dogs'.

Answer

On 10 August 1989 the Department of the Environment published a consultation document 'Action on Dogs' which sought views on various issues, including the content and operation of the Home Office model byelaws. Comments were submitted by 126 local authorities and other bodies and these have been carefully considered in the light of our experience in dealing with dog byelaw applications since the models were last reviewed in 1987.

When reaching his conclusions, the aim of the Home Secretary has been to offer a wide range of possible byelaw provisions for dog control which can be used by local authorities as building blocks in a variety of combinations to produce schemes tailored to meet local needs.

By far the largest number of those commenting suggested making the 'poop-scoop' byelaw more freely available. This makes it an offence for a person in charge of a dog to fail to remove

PENALTY

7. Any person offending against byelaws 3 and 4 shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

REVOCATION

8. The byelaws [Byelaw No ... of the byelaws] made by on in respect of grounds are [is] hereby revoked.

SCHEDULE

any faeces it may deposit in designated parks, recreation grounds and open spaces. At present the byelaw may be applied to any children's playground or sports pitch, beaches and promenades in the summer season, trunk road picnic sites, and picnic areas in country parks, but it may only be applied to parks and open spaces provided that there are alternative uncontrolled areas. Experience of operating the byelaw has shown that, while it has been successful in designated parks, uncontrolled areas nearby tend to become heavily fouled. We consider that it is reasonable to expect dog owners to clear up after their pets in places used by other members of the public, including children. Therefore my rt hon. and learned Friend has decided that he will be prepared to confirm 'poop-scoop' byelaws for any park, recreation ground or open space, except heaths and woodlands where the local authority considers them appropriate and without the need to provide alternative uncontrolled areas. The byelaw will also be available for beaches and promenades all the year round. Parts of beaches which are subject to a dog ban during the summer season may be designated as 'poop-scoop' areas for the remainder of the year.

We have also considered the byelaws available to control fouling on highways. At present, local authorities may introduce a byelaw which makes it an offence simply to allow a dog to foul a pavement next to a carriageway or an adjacent grass verge up to 4 metres wide. Although most local authorities have this byelaw, it has been criticised on various grounds: it provides no protection either for footpaths which are not adjacent to a highway or for pedestrianised areas and, once the fouling has taken place, the faeces remain there. Since our aim is to encourage dog owners to remove dog mess from the environment, my rt hon. and learned Friend proposes to replace the 'no fouling' byelaw for pavements with a further extension of the 'poop-scoop' byelaw.

In addition to recreation grounds and open spaces, the 'poop-scoop' byelaw will be freely available for local authorities to apply to any footpath in a built-up or residential area

whether or not it is adjacent to a highway. The byelaw can also be applied to any grass verge which is maintained in good order and is adjacent to a highway. It will also be available for any pedestrianised area owned by a local authority such as a shopping precinct.

My rt hon. and learned Friend has also decided to make the 'poop-scoop' byelaw available for the gutters of highways in urban areas. While it would be too hazardous to both the pet owner and the traffic to extend the 'poop-scoop' byelaw to the carriageway itself, the 'no fouling' byelaw will become available for carriageways in built-up areas. This will prevent the transfer of the problem from the gutter to the carriageway and deter owners from permitting their pets to foul the highway. It will be open to local authorities to choose to use these byelaws for pavement, gutter and carriageways either individually or in combination to meet their local needs.

We have also considered the operation of the 'dogs on leads' byelaw. This compels owners to keep their dogs on leads at all times in designated places. It may be applied to parks and other open spaces where a need can be shown eg, ornamental gardens, children's play areas and bowling greens, promenades adjacent to beach ban areas during the summer months, and areas where the disturbance of wildlife is a consideration.

There is a need to balance the interests of those who wish to visit parks without being bothered by loose dogs, such as mothers with young children and those pet owners who wish to exercise their dogs off the lead at some time during the day. But the balance is, in general, best determined locally, bearing in mind the need to protect those, such as children, who are likely to be frightened or disturbed by loose dogs. In order to assist local authorities, my rt hon. and learned Friend has decided that a wider range of byelaws should be made available to promote greater flexibility.

First, the 'dogs on leads' byelaw will be available in a wider range of circumstances than previously permitted, including promenades all the year round, where the local authority is able to justify the use of the byelaw, which will normally involve showing areas are available locally where dogs may be exercised off the lead at some time during the day. Secondly, two new model byelaws will be made available. Instead of imposing a requirement for a dog to be kept on a lead in a park or part of a park all day, it will be possible for a local authority to limit the lead requirement to certain times of day or days of the week, for example when young children are most likely to be there. Different times could be imposed in different parks in the same area to cater for various local needs. A second new byelaw will give powers to council officers to ask for dogs to be put on a lead if it is necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance. This byelaw will be available to local authorities to apply to designated parks and open spaces, again where a need can be demonstrated.

Finally, we have examined the byelaw which prohibits dogs from entering designated and enclosed grounds, enclosed parts of other grounds (children's play areas, bowling greens etc) and parts of beaches during the summer season. My rt hon. and learned Friend has concluded that these measures should continue to be available on the same basis as before, but that a wider variety of byelaws should be available to the local authority. Two further model byelaws have been developed. First, a byelaw which enables dogs to be banned from a designated park or open space for a specified period of the day. This will be similar to the new time limited 'dogs on leads' byelaw and will be available for open parks as well as enclosed ones. Secondly, we have developed a new model byelaw which will enable local authorities to ban dogs from designated enclosed parks, apart from a specially designated and enclosed exercise area. The exercise area will need to be of a reasonable size and usually be subject to a 'poop-scoop' byelaw. Owners will be required to take their dogs on the lead from the park entrance to the exercise area.

When considering which combination of byelaws is most suitable for their areas, local authorities will need to bear in mind that, unlike the general law, the validity of byelaws, including their reasonableness, can be challenged in the courts. Local authorities will need to weigh up the needs of various sections of the community. These will include mothers with children and others who wish to be able to enjoy a visit to the park either free from dogs or free from boisterous loose dogs. There will also be pet owners who wish to exercise their dogs off the lead at least once a day, reasonably near their homes. These will include families with children and dogs who wish to go to the park together, shift workers, the elderly who cannot walk far and single women who would wish to choose a time to exercise their dogs when they feel it is safe to do so.

My rt hon. Friend, the Secretary of State for the Environment intends that the same range of byelaws should be available to housing authorities for public housing estates and amenity greens.

The consultation paper 'Action on Dogs' also sought comments on the present procedure for local highway authorities to make 'dogs on leads' orders under section 27 of the Road Traffic Act 1988, and whether this power should be replaced by a byelaw making power. The balance of comment was in favour of change. The Government has taken note of this and proposes to take this forward when a suitable opportunity arises.

My rt hon. and learned Friend is grateful to all the bodies that commented on the byelaws and he hopes that the increased range of measures will strengthen the ability of councils to regulate dogs and to deal effectively with the fouling of public areas. Details of this Answer, together with the wording of the new model byelaws, will be circulated to local authorities shortly.

Prime Minister

DOMINIC MORRIS

Since, as John Mills says, the Home Office

23 July 1990

note (flag A) meets your earlier concerns
Content for them to announce the outcome
of the review subject to guidance from John
DOG BYELAWS REVIEW Wakeham & himself on the
best timing to do so?

As the Home Office letter notes, I have followed this up with Peter Lloyd in the light of the Prime Minister's concerns on the Home Office's original proposals (Caroline Slocock's letter of 25 June). Dm 23/7

I am happy to say that, after some negotiation, what is now proposed entirely meets the Prime Minister's wishes. The new model byelaws will, if all adopted by local authorities

- oblige people to clear up in all public places including the gutter. This will be coupled with a 'no fouling' rule on carriageways. The end result is that, in practice, all dog owners will have to clean up after their dogs everywhere. Although enforcement is bound to be patchy, one must hope that this will over time lead to a marked change in accepted standards of behaviour;
- permit people to let dogs off the lead in parks only at certain times of the day (eg early morning);
- enable the police or parkkeepers to require dogs to be put on the lead to prevent likely nuisance or annoyance to other people;
- permit dogs to be banned from parks etc at certain times of the year, week or day;
- restrict dogs to their own enclosures in parks so that children not dogs can run free.

I have been through all the details carefully with the Home Office and, after certain changes, I am now satisfied that what is proposed is tough and comprehensive and should stand the test of time.

PRESENTATION

The Home Office want to announce by PQ tomorrow. But the Prime Minister did ask John Wakeham to consider this aspect and he has not yet seen the paper circulated today.

I gather that he may be of the view that the announcement should be held over until the Autumn

- to avoid its being swamped by this week's major stories;
- so that it can be coordinated with the Government's campaign to turn public opinion, and the Lords, on dog registration.

I can see some merit in this. There is no overriding need for an announcement tomorrow.

Departmental Responsibilities

One remaining problem is whether responsibility for confirming dog control byelaws should stay with the Home Office, or move to DOE, which already undertakes the function in respect of public housing estates. Both departments are agreed that the task should be given wholly to one of them, but they cannot agree which.

This must be sorted out before revised guidance on the byelaws is issued to local authorities. If an announcement is delayed, the new date in the autumn will impose a useful deadline. In making it easier for local authorities to have dog byelaws (through not having any longer to show need) it would be embarrassing if the Government made them do everything in duplicate.

My own inclination would be for DOE to take on the job, to mark a break with the old, more restrictive Home Office regime. But the Prime Minister should, in the first instance, leave it to the two departments to reach an agreed view.

Recommendation

- welcome the Home Office's revised proposals and its draft PQ answer;
- defer to John Wakeham's advice on presentation;
- but suggest there may be a case for deferring an announcement so that it can be done to maximum advantage apropos the next round of the dog registration debate in the spillover;
- ask DOE and Home Office to settle the question of departmental responsibility, either before a delayed announcement or before new guidance on the byelaws is sent to local authorities, on the basis that only one of them should be responsible for confirming all dog control byelaws.

John Mills

JOHN MILLS

do
●
CAROLINE SLOCOCK

Re. obs
BF
13/7
12 July 1990

DOGS

This minute does not require any immediate action but is simply an attempt to take stock in the light of last week's vote in the Lords for a registration scheme and before the Prime Minister is once again requested to give a steer. I have a feeling that the Government's current approach to the whole question has become rather disjointed, and is being seen as mainly a response to strong outside pressure with a consequent lack of cohesiveness: lots of proposals, in other words, but, to date at least, precious little action. If the Lords' amendment does nothing else, it may help focus minds on overall policy on an issue which remains of high public concern; and if it is not thought possible to overturn it, ways need to be found of turning it to best advantage.

This mood was reflected in a number of the contributions to the Lords debate. One of the most thoughtful was from Lord Houghton, an Opposition peer but an opponent of registration. At Annex D is a letter from him in today's Times which encapsulates his position.

As regards stock taking, Annex A sets out all the various proposals which the Government has put forward recently. As you can see, rather more has been proposed than implemented. I do not feel confident that the various Departments concerned are particularly clear about the way ahead.

Although final decisions on how to react to the Lords' amendment can wait until the spillover, we can expect advice from DOE shortly with a view to the Government's announcing its intentions before the recess. I have an open mind at present on the need for this, but at least a DOE paper will be a peg on which discussion can hang. In the expectation of advice that there is little prospect of, and little capital to be gained from, trying to overturn the amendment, we need to consider to what extent the Government might, or should, seek to add to or amend the amendment to make it more palatable and more realistic. For example:

- should the Government now insert the proposal on strays (duty on local authorities to round them up) canvassed last year but dropped from the EP Bill in the (vain) hope of heading off dog registration amendments;
- the need absolutely to ringfence a registration scheme from the community charge and ensure that it is fully self-financing, whether nationally or locally organised. Over and above this, there is clearly a case for ensuring that the cost of all dog control measures, including wardens etc already financed from RSG and the community charge, should henceforth be financed solely from registration fees. The effect of this would be to put up the costs of registration and thus bring home to dog owners the true costs to the community of dog ownership. If this is not done from the outset, one can easily see the gradual, or even the rapid growth, of an enforcement industry which will put all sorts of pressures on the community charge;
- a requirement that the setting up/administering/enforcement of dog registration schemes be contracted out to the private sector;
- whether the Government, in accepting registration in principle (or even if it doesn't), should propose a single consolidating Bill in 1990/91 or 1991/92 to draw together all the existing and proposed dog control measures, including registration. This might help ensure that dog registration stopped being seen as an end in itself, but rather as one aspect of a wider reform and tightening up. This route might also be a way, as Lord Houghton hints, of getting off the hook of a registration scheme altogether, although politically that would be very difficult.

No doubt there are other considerations. Ringfencing is clearly the most critical. But there is also a strong case for seeking to put registration into a wider context. As is evident from Annex A, the Government have made all sorts of proposals on dog control in the last year or two, not many of which have been implemented. The issue

crosses departmental boundaries, and is suffering in the usual way as a result.

Annex B sets out the options on dog registration in more detail.

At Annex C, for your information, is a note on the latest state of play on byelaws. The Home Office is making some attempt to move forward, but its perspective remains largely that of dog owners and it does not display much enthusiasm for tilting the balance meaningfully towards those frightened or disgusted by the impositions caused by dogs at large in virtually all our public places.

John Mills
JOHN MILLS

ANNEX A

CONTROL OF DOGS: PROPOSALS AND CHANGES 1988-90

Already implemented

- Local Government Act 1988 enabled local authorities to operate dog warden schemes. (About 200 authorities now thought to have done so).
- Dangerous Dogs Act 1989. This strengthened 1871 Act by enabling courts to order and effect destruction of dogs after a conviction. Courts also enabled to disqualify convicted owners from further ownership for a given period. Side effect is reinforcement of powers to deal with dogs which chase sheep etc.
- Guidance given to the courts last year on the new Act and on existing powers under 1847 Act (unmuzzled ferocious dogs at large). Several convictions secured under latter, including recent well-publicised case in Enfield where dogs got into a school playground.

Almost implemented

- New duty on local authorities to clear dog faeces from public places (part of new litter duty in Environmental Protection Bill).
- Dog byelaws review. Stronger, more easily available and wider-ranging model byelaws for local authorities to use if they wish, covering dog fouling, dogs on leads and dog bans in public places. (To replace unsatisfactory model byelaws issued in 1987). A similar review is taking place in Scotland.

Proposed by Government

(1st consultation document, August 1989)

- Stray dogs. New duty on local authorities to collect, hold and, if necessary destroy stray dogs, and to levy fixed penalties plus costs on owners collecting stray dogs from custody;
- clarification of duty on local authorities to enforce 1930 collar and tag rules. (The power of enforcement was only given to local authorities in 1981, and in the shires is exercisable by counties although in practice districts have the power too. (In practice this means that no-one does it). The current proposal involves putting a specific duty on districts). Originally a candidate for the EP Bill, but excluded for some reason on strays;
- removal of power to require dogs to be on leads on highways from Road Traffic Act order-making system (where it is also, in the shires, a county function), and make the same part of dog control byelaws. (Although proposed by the Government in the 1989 paper, and receiving a largely favourable response from councils in the consultation, this was not even mentioned in the initial proposed announcement on byelaws; but it goes hand in hand with the dogs on leads issue).

(2nd consultation document, June 1990)

- new, all-embracing offence of allowing any dog to be 'dangerously out of control';
- additional powers for police and local authorities to destroy a dog appearing to be 'dangerously out of control' and to seize and destroy dogs after an incident;
- additional powers for courts to secure destruction of dogs pursuant to conviction under 1847 Act;

- additional powers for courts to impose muzzling orders, and/or requirement for a dog always to be kept on a lead;
- possible requirement for all dogs of certain breeds always to be muzzled or kept on leads;
- to help deal with strays, possible new offence of allowing a dog to be 'persistently' at large;
- fixed penalty system for enforcement of collar and tag rules.

Imposed on Government (unless overturned)

- dog registration scheme. The exact words of the Lords' amendment would appear to give the Secretary of State fairly wide leeway as to the scheme introduced, provided it is done within one year.

DOG REGISTRATION

The Lords' amendment requires:

- introduction of a registration scheme within a year, for the identification and control of dogs;
- the scheme to be administered by local authorities, but fees, including variations and exemptions, to be set by the Secretary of State;
- the scheme to be approved by affirmative resolution of each House.

The amendment was passed 155 to 83.

OPTIONS

The first option is outright rejection. Whether that is feasible depends entirely on the advice of the Whips. For present purposes, it is assumed not to be feasible and that the Government needs therefore to make the best of a bad job.

The other options thus seem to be:

- acceptance as drafted;
- acceptance of registration in principle but seek to have just an enabling power for local authorities to set up schemes if they want to;
- acceptance in principle (a requirement not just enabling) but seek to change the details.

Each option could have with it a package of control measures - or the promise of them if they cannot be fitted into the EP Bill - broadly

along the lines of what the Government has already put on the table.

Acceptance as drafted

This would be unsatisfactory because it would result in an essentially national scheme with fees set centrally and thus all the cost pressures of enforcement falling on the community charge.

Enabling power

This would be a step improvement if it could be obtained. That depends on the Whip's advice.

Just seek to change the details

This is probably the best the Government can hope for, and it could achieve a fair amount. The objectives might be:

- administration and fees set by the local authority according to local need;
- requirement to contract out administration and enforcement;
- absolute ringfencing from the community charge. This means not only the costs of administration but also the costs of all dog control enforcement.

To the extent this is already a burden on the community charge, it would be shifted to dog owners only. If this put the registration fee up, it might even have a beneficial effect on the dog population. If it creates evasion, it will simply vindicate the Government's position.

Ringfencing is crucial if the costs of enforcement are not to become a running sore for the community charge.

On the face of it this all ought to be achievable in Parliament. It would require only modest changes to the wording of the amendment.

Timing

Assuming the EP Bill gets Royal Assent in mid-November, the Government would have until November 1991 to lay orders, with debates before Christmas 1991 but not much before. Commencement might be April 1992 or quite possibly later. This means that the whole business could probably be strung out until after an election. But on balance, if the view is taken that the Government has to concede on the principle, it may well be better to get things going sooner in 1991 rather than later so that the issue is off the election agenda and set up in the most suitable manner in the circumstances.

Other Measures

The amendment passed the scrutiny of the House authorities by being prefaced 'in order to control the environment'. This could equally be applied to control of strays, and there would be no better time to put a duty on local authorities to deal with strays, as proposed last year. (The shortcomings of a registration scheme in dealing with this would no doubt soon be revealed). Inclusion of some of the other items at Annex A would be for consideration; not all would be reasonable candidates for the present Bill.

DOG BYELAWS REVIEW

The Home Office is reconsidering its position in the light of the Prime Minister's comments (letter of 25 June). DOE (Housing) and John Wakeham's office are involved and this is providing a useful impetus. But there remains in the Home Office a marked reluctance to embrace meaningful change, with concentration on problems not solutions (eg need for caution on tougher dogs on lead byelaws in case they make things difficult for foxhunting) and on the rights of dog-owners against those disturbed by dogs.

There is some way to go yet before a good announcement can be made and pressure needs to be maintained (a) to tilt the balance towards those disturbed and frightened by dogs and (b) to ensure the Government meets its commitment to give local authorities the 'tools for the job' in relation to the new litter duty.

Specific items:

'Poop-Scoop' Byelaws

The PM's position is that they should be available for all public places except heathland etc. The Home Office view is that this goes too far because it would mean that dog owners always had to clear up, wherever they were. This, it is argued, represents a major shift in policy which should not be entertained lightly. Their current policy is predicated on the assumption that dog owners should always have somewhere where their pets can foul at will with no obligation to clear up for the benefit of others.

Two examples:

(i) Beaches.

The current situation is that byelaws can be used to ban dogs from designated stretches in the summer months only. 'Poop-scoop' could be extended to undesignated areas in the summer, but the Home Office is

arguing that it would be unreasonable to dog-owners to have year-round applicability. Fouling is acceptable in the winter months because few (or at least fewer) people will be using the beach.

(ii) Gutters and carriageways.

The HO assumption is that in conceding the extension of 'poop-scoop' byelaws to pavements and verges in place of current 'no fouling' byelaws, dog owners shall remain free to get their pets to use the gutter or carriageway, with no obligation to clean-up. This is justified, as noted above, in terms that dog owners should not be universally obliged to clean up. A subsidiary argument is that it would be unsafe to clean-up in the gutter (but not, it seems, to drag one's pet there in the first place).

But councils will have a duty to clean gutters and carriageways as well as beaches, and last year's consultation paper talked explicitly of giving them, through byelaw revision, the tools for the job to meet the new duty. In typical residential roads, moreover (which is where the problem lies) the 'safety' argument is rather ludicrous.

NB: in Westminster, for example, a mews is defined as a carriageway. One is not seeking to require people to step out into main roads after their dogs. If dogs are on leads as they should be, that hardly arises.

But the byelaws have got to be comprehensive if there is to be real change; otherwise the problem is just shifted from one place to another. It would remain open to a local authority not to make byelaws, but it should not be hindered if, in accordance with local opinion, it wants to take tough action.

Dogs on Leads

The PM's view was that:

- (i) local authorities should not have to show need for such byelaws in parks and open spaces;

- (ii) there should be a new model byelaw available for keeping dogs on leads at certain times, or rather, only allowing them off at certain times.

With some reluctance, Home Office officials are now looking at this, but are evidently unhappy about abandoning the requirement to show need, lest the Home Secretary ends up confirming an "unreasonable" byelaw. DOE have been helpful in this regard by pointing out that they, in respect of housing estates, have no expertise to judge need, and would be more legally exposed if they sought to, knowing they lacked the expertise, than if they did not. This has forced HO officials to admit that their own assessment of need, having required authorities to submit masses of argument, maps, etc, is perfunctory and also without any particular expertise or local knowledge. Judgements about local need are made without site visits, for example. This is the kind of area where it seems nonsensical for Government to seek to second guess local authorities. There has in any case got to be local consultation before new byelaws may be submitted for confirmation.

HO officials are also worried about the implications of the PM's proposals for fox-hunting and the like. But this kind of thing could easily be dealt with in drafting as an exception.

Bans on dogs

The PM has asked for the model byelaws to be strengthened (eg fencing off dogs, not children). HO officials are clearly very reluctant, arguing that they should not confirm byelaws for which there is no 'specific requirement' as could be demonstrated, for example, for a children's playground. The counter-argument once again is that it is down to the local authority to decide what it wants to do, and the Home Office should then facilitate, not obstruct it. This point has to be pressed. The review will be seen as a damp squib if nothing is done on this.

Other points

- DOE are taking the lead in sorting out the housing estate anomalies (eg requirement for dog exercise areas in order to justify 'poop-scoop' (to deter outsiders) even if tenancy conditions prohibit dog ownership);
- HO, with DOE/DTp, are now considering how to deal with the issue raised in last year's consultation document about Road Traffic Act orders requiring dogs on leads on designated highways. (Initially it intended saying nothing although the Government had posed the question.) The general consensus, central and local, is that these powers would be better exercised as byelaws, but this may need primary legislation!

(A spin off here is that it would help clarify county/district responsibilities, by removing responsibility from the former, as highway authorities, to the latter. The same is being done in respect of litter clearance on main roads.)

- muzzling, through byelaws, may not be possible because of existing (and proposed) primary legislation. (Byelaws may not be made for subjects which primary legislation covers.)

Solution to impasse on dog control

*From Lord Houghton of
Sowerby, CH*

Sir, The Government have no time to lose if they are to find an acceptable way out of the deadlock in Parliament on dog control. Your admirable summing-up (July 7) explains how it has all come about, and how it might be overcome.

Parliament rises at the end of July, with the Lords not returning till October 8. The final stages of this deadlock will then have to be completed in both Houses. There is no escape from that.

The Government should now seize the opportunity to build on their recently published proposals. A commitment would be needed to introduce an expanded consensus bill on dog care and control in the next session. Otherwise, nothing more to heal the breach is likely before the general election.

A dog register is a record and not a remedy. It is up to the Government who oppose it (on numerous grounds, including expense) to introduce measures of positive benefit to enable judgment on the need for registration to be made in the light of experience.

Short of attempting to bully Parliament into submission or doing a U-turn themselves, this is the only sensible course for the Government. Dog welfare and related public concerns have long awaited the attention of Parliament. The strength of the frustration of the House of Lords was clearly shown in their firm rejection of the Government's negative response.

Yours etc.,
HOUGHTON of SOWERBY,
House of Lords, SW1.
July 9.

PRIME MINISTER

DOGS: LORDS VOTE

I am afraid we lost the vote in the Lords tonight on the dog registration scheme. The margin was very wide in favour of a national dog registration scheme along the lines which Dame Janet Fookes has proposed (155 for, including a fair few Government rebels, 83 against). This vote was despite what was, by all accounts an excellent speech from Lord Hesketh which prevented the margin being even wider.

The Environment Protection Bill does not receive Report and Third Reading in the Lords until the spill-over in October (we would not in any case be reversing the dogs vote at that stage). It is probably not worth saying now formally that we will reverse it in the Commons since that would only provoke the Lords to be difficult on other aspects of the Bill; but David Heathcoat-Amory has already been on television making clear quite rightly the Government's view that a national dog registration scheme is a rotten idea. The vote does not affect the DOE proposals due out shortly on muzzling and dog fouling though it might cause DOE to resurrect ideas, which were looked at previously for local dog registration schemes. Caroline has made clear to DOE that they would anyway need to consult you and other colleagues before taking any such ideas further.


DOMINIC MORRIS 

5 July 1990

c:\wpdocs\parly\dogs.dca

2
PRIME MINISTER

DOGS

Following your comments on the Home Secretary's proposed announcement on the bye-laws on dog fouling and control, the Home Office have been considering with Mr Wakeham and Lord Belstead when best to make an announcement.

The Home Secretary had hoped to make an announcement this week, at the same time as the consultation document on dogs was published. But your comments have raised a number of issues which they want to consider further. Earlier this week, they thought they would postpone an announcement until next week - which would still be before the amendments on dog registration are considered in the Lords.

It has now been decided to postpone the announcement until after the Lords consider these amendments. Mr Wakeham and Lord Belstead agree that an announcement on this will not be crucial. The key thing, they think, is that the consultation paper proposals on dangerous dogs are now in the public domain. John Mills thinks that it is better to get it right than to rush ahead with an announcement next week.

CAB

Caroline Slocock
29 June 1990

2
PRIME MINISTER

DOGS

I have passed on your comments on the proposed announcement on byelaws for the control of and fouling by dogs.

Originally the Home Office had hoped to make a joint announcement tomorrow of the consultation papers on dogs (which includes the suggestion of banning the domestic ownership of certain breeds) and of these changes.

The Home Office say that they need a little more time to consider your suggestions before making an announcement. They intend to go ahead tomorrow with the launch of the consultation document; and announce the changes to the model byelaws next week. Both announcements will be in time before the amendments on dog registration are debated in the Lords.

Mr Wakeham has been consulted on this arrangement and is content with it.

CRS

ms

Caroline Slocock
26 June 1990



be: p.u.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

25 June 1990

Dear Sara,

DOGS BYELAW REVIEW

Thank you for your letter of 20 June in which you seek the Prime Minister's agreement to an announcement, at the same time as the consultation document on dogs is published, of proposals following from the dogs byelaw review.

The Prime Minister has seen your letter and the statement attached to it. The Prime Minister welcomes the proposal to make the current "poop-scoop" byelaws more freely available, removing the current restriction where local authorities have to satisfy the Home Office that alternative uncontrolled areas for dogs are available before applying the byelaws. She agrees that these byelaws should be available for use in all public places, except those which might be regarded as wild such as heath and woodland. In view of these changes she accepts that the current "no fouling" byelaw which applies to pavements and verges should be replaced with a wider use of the new "poop-scoop" byelaws. However, she does not accept that the current byelaw on leads should be left untouched. She considers that local authorities should not have to show the need for such byelaws for parks and open spaces, as they have to at present. She also feels that the proposed new model byelaw giving powers to council officers to ask for dogs to be put on a lead where that would be necessary to avoid nuisance or annoyance will not give sufficient protection to children. She therefore wishes to see a new byelaw which would require dogs to be kept on leads in parks at times when small children may be there and/or requiring muzzles for dogs, perhaps just potentially dangerous dogs, when off the lead.

The Prime Minister would also like to include in the new powers a model byelaw which would allow dogs to be banned from public places except in special designated areas of parks or similar areas. The present assumption is that dogs can go everywhere unless specifically excluded.

On a point of detail, the Prime Minister is advised that there is an anomaly in the power allowing local authorities to apply the "poop-scoop" law to amenity greens in public housing estates; and she would like to see this removed. She understands that at present the law discourages local authorities from applying this byelaw because it can only be used in estates where dogs are given special exercise areas whereas in practice dogs are only allowed by many local authorities where they have access to a private garden.

In view of the sensitivity of this question and the difficulties which may be encountered when the amendment to the Environmental Protection Bill on dog registration schemes are taken in the Lords, the Prime Minister has asked that Mr Wakeham should be invited to give his views on how these proposals might be best presented.

I am copying this letter to Gillian Baxendine (Lord President's Office), Kate Bush (Department of the Environment), Michael Harrison (Ministry of Agriculture, Fisheries and Food), Jim Gallagher (Scottish Office), Stephen Williams (Welsh Office), John Neilson (Department of Energy), Murdo Maclean (Chief Whip's Office), Robert Canniff (Office of the Chancellor of the Duchy of Lancaster), Gillian Kirton (Lord Privy Seal's Office), Douglas Slater (Government Whips, Lords), Juliet Wheldon (Law Officers' Department) and Sonia Phippard (Cabinet Office).

Yours sincerely,

Caroline

Caroline Slocock

Ms. Sara Dent
Home Office

DOG BYELAWS REVIEW

The Home Secretary has sent the Prime Minister a report on this as requested.

It is not an imaginative document, for a subject of such public concern, and it does not in my view meet the wishes of the Prime Minister for firm action to control dogs. A well-crafted announcement on this subject could do much to counteract pressures for a dog registration scheme, but I think what is on the table from the Home Office is just too lame to achieve this.

Regardless of the Prime Minister's reaction to the specific points raised in this note, the subject is an obvious candidate for presentational input from John Wakeham, who might be asked to think about this angle in conjunction with Peter Lloyd, who is the responsible minister in the Home Office.

Background

The current model byelaws were issued by the Home Office in 1987. They cover dog fouling, dogs on leads, and bans on dogs in designated areas. A summary of their present scope is attached. There can be no doubt that they are quite inadequate to meet not only current public concerns about dogs, but also to balance the new litter duty being imposed on local authorities. They are slanted much too much in favour of the 'rights' of dog-owners.

For example, since 1987 the Home Office's policy has been that it will not permit local authorities to apply 'poop-scoop' byelaws to public grounds (other than play areas and sports grounds) unless

it (not the local authority) is satisfied that the local authority has other public areas where people may exercise dogs without having to clear up after them. This position, which flabbergasts me, has been justified on the grounds that anything else would be unreasonable to dog-owners.

It is also evident that existing procedures for local authorities to get byelaws confirmed is desperately bureaucratic and designed to put local authorities off. This is why so few have adopted byelaws, not, as was asserted in last year's consultation document, because they had simply chosen not to exercise their powers. This comes over loud and clear from many of the responses to last year's consultation.

The Home Secretary's Proposal

Dog Fouling

The Prime Minister's intervention has now prodded the Home Office into accepting that it is reasonable to expect dog owners to clear up in all public places. This is a signal achievement!

It is proposed that 'poop-scoop' byelaws be freely available to local authorities without their needing to demonstrate the availability of alternative, uncontrolled areas. This is absolutely right.

However, the Home Office still argues that the byelaw should not be available for heaths and woodland because it is unreasonable to expect dog owners to clear up in such places, and because such areas may be fouled by horses and grazing animals.

This is not acceptable. Places like Hampstead Heath and Wimbledon Common, to say nothing of urban beauty spots like Banstead Downs or Epping Forest, are liberally fouled by dogs. There may need

to be exceptions where clearing up is impracticable (eg in brambles) but local authorities should be left to decide. The presumption should be that such areas - all public areas - may be covered by 'poop-scoop' byelaws. The litter duty will apply to all such places. There could be a defence of impracticability.

To meet the Home Office's point about horses etc, I think one can draw a reasonable and proper distinction between fouling by domestic carnivores, and by herbivores.

'No Fouling' Byelaws

The Home Secretary proposes, in extending availability of 'poop-scoop' byelaws to drop the existing one against 'no fouling' on pavements and verges. This is right. It is ineffective because (a) it is not enforced and (b) its rationale is to urge owners to make their dogs use the gutter and then, not to clean up after them. Nor does it apply to footpaths and pedestrian precincts.

Thus 'poop-scoop' byelaws could also be extended to pavements and verges. They must, however, also be extended to gutters and carriageways, which the Home Office currently intends to continue to exclude.

Local authorities must also be given the option of extending the byelaws to country footpaths, village greens etc without having to prove need to the Home Office. What is needed is an unequivocal statement of intent that, to complement local authorities' new litter duty, they will be able to, and indeed should, apply 'poop-scoop' byelaws to all the public places for which they are responsible as regards the litter duty. Anything less from the Government would be unreasonable.

Public Housing Estates

This is a particular problem since DOE is responsible for

confirming byelaws. There is I think some confusion of purpose here which the review has failed to uncover. For example, Wandsworth has responded to the consultation by saying that, while their tenancy conditions preclude the keeping of pets unless there is access to a private garden. DOE's model byelaws, which would control fouling on public areas of estates, in fact require dog exercise areas. Hence a reluctance to apply them. This needs sorting out. Authorities must be able to impose "poop-scoop" byelaws throughout estates without restriction.

Dogs on Leads

The byelaws available at present allows dogs to be kept on leads in designated places. The Home Office puts the onus on local authorities to show need for this, and says it will not approve a byelaw without distinct need being shown. Their basic presumption is that dogs should be allowed to roam free in public places. Thus there are hardly any dogs on leads byelaws for parks and open spaces.

On the other hand, dogs on lead byelaws are widespread for highways, because they derive from the Road Traffic Acts and the Home Office is not involved.

What the Home Office proposes here is inadequate and unworkable. It is to enable council officers to ask for dogs to be put on leads to prevent nuisance or behaviour giving reasonable grounds for annoyance. I do not believe the average rottweiler owner, nor the average park keeper, will take much notice of this.

Yet there is a real problem. It is not to do with pensioners letting a small dog roam while they sit. It is to do with big dogs which roam free and frighten people. My wife, for example, recently had four 6 year olds on Wimbledon Common when a van drew up and disgorged eight huge guard dogs, for exercise. They barked,

jumped and ran amok in an area full of children, generally intimidating them. They did not seem well-trained. These are the situations which lead to the incidents so often now being reported.

The Home Office have not addressed this at all. Possible options would be byelaws which:

- require all dogs (or all dogs above a certain size) to be on a lead in parks between the hours of 10 - 4, when young children will be about (later in summer);
- require all dogs (or just large ones) to be muzzled if off the lead in parks.

The alternative is to look more closely at dog ban byelaws.

DOG BANS

Here the Home Office proposes no change. This is unsatisfactory given the Government's position, and the state of public opinion. In particular it fails to address the Prime Minister's view, expressed last year, that we should move to a situation in parks etc not where dogs are excluded from certain small areas, but rather only permitted in designated, fenced areas (with poop-scoop' byelaws applying).

At present such byelaws are available only for children's playgrounds and enclosed sensitive areas. This is unsatisfactory. It leaves the balance tilted too much towards the freedom of dog-owners to the detriment of others. Authorities should be free to propose tough bans if they, moved by local opinion and prepared to pay for enforcement, wish. They should not be subject to the heavy hand of the Home Office all too easily saying no. Anything less will undermine the Government's whole credibility on the issue.

Conclusion and Recommendations

The byelaws review is an important opportunity for the Government to signal its determination to meet, and indeed move ahead, of public concern on dog fouling and dog control. Giving local authorities greater flexibility and scope to make byelaws will be popular. But what the Home Office proposes does not meet the need satisfactorily. The underlying policy needs strengthening, as well as the presentation.

The line I recommend the Prime Minister takes is as follows:

- proposals do not go far enough to meet public concern and give local authorities sufficient powers to back up the new litter duty;
- basic principle should be that "poop-scoop" byelaws be freely available for all public areas where the litter duty will apply. This includes heather and woodlands, village greens, gutters and carriageways and rural footpaths. A tightly defined defence of impracticability (eg when a dog disappears into bushes) might be required, but authorities should not have to show need to Home Office.

The Government's position must be that dog owners always clear up in all public places;

- given this, agree withdrawal of 'no fouling' byelaws;
- DOE should review position regarding byelaws for amenity greens in public housing estates. Understands there was some critical comment on this in response to consultative document;

regarding dogs on leads, not convinced what is proposed would be workable. Stronger solutions needed to meet public concern. For example, byelaws requiring dogs on leads in parks between 10-4 (or later in summer), and/or requiring muzzles for large dogs off the lead. Local authorities should not have to show need for such byelaws for parks and open spaces;

- dog ban byelaws should be more freely available. Local authorities should be enabled to work on the assumption that dogs are excluded from all but a designated area of a park, rather than the present assumption that they can go everywhere unless specifically excluded;
- successful presentation of a firm line on dogs is important. This is the only way to head off pressure for dog registration schemes. Invite John Wakeham to consider the proposals, with particular regard to presentational aspects in conjunction with Peter Lloyd.

John Mills

JOHN MILLS

PRESENT BYELAW POLICY

Pilot project

1. On 2 September 1985 new "poop-scoop" byelaws came into force in four local authority areas. This made it an offence for a person in charge of a dog to fail to remove any faeces it might deposit in designated parks, recreation grounds and open spaces. At the end of a trial period, the byelaw was evaluated and it was announced by Mr Hogg in April 1987 that the byelaw was being made available to councils for parks, recreation grounds and open spaces but not pavements.

2. The opportunity was taken at that time to review the other models of byelaws and a new set of measures which was hoped would enable local authorities to deal with dog nuisance in their areas. These were included in a booklet "Model Byelaws for the Regulation of Dogs" which was issued to local authorities in April 1987.

Present byelaws

3. The available model byelaws are summarised below:

a) Dog bans

Available for:

- i) enclosed childrens' playgrounds and enclosed sensitive areas;
- ii) parts of beaches;

b) "Poop-scoop"

Available for:

- i) parks, recreation grounds and open spaces where there is an alternative area;
- ii) childrens' playgrounds and sports grounds, even where there is no alternative area;
- iii) beaches and promenades;

but not pavements or grass verges or heaths or woodlands and areas used by horses and grazing animals.

c) No fouling

Available only for pavements and ornamental grass verges upto 4 metres wide.

d) Dogs on leads

Available for:

- i) recreation grounds where a need can be demonstrated such as ornamental gardens near childrens' play areas and bowling greens;
- ii) promenades and roads adjacent to banned areas of beach;
- iii) areas where disturbance of livestock or wildlife is a consideration.

①

PRIME MINISTER

DOGS

Last week you saw a draft consultation document which the Lord President wished to issue urgently to counter amendments to the Environmental Protection Bill in the Lords. You agreed to a suggestion from John Mills that the proposals on dog fouling and control should be announced now rather than included in the consultation document as they had already been subject to one consultation exercise.

The Home Secretary now plans to do so on the same day as the consultation document is issued - probably Wednesday of next week. (The Lords amendments are now not likely to be debated until early July rather than 26 June as thought earlier). The attached letter gives details of what is proposed, which boils down to:

- making the current "poop-scoop" bye-law more freely available. At present, local authorities can only apply this law only where they can provide alternative uncontrolled areas where dog owners can exercise their dogs. In future it would be available for use in all public places, except heath and woodland, without restriction;
- replace the current ineffective "no fouling" bye-law for pavements and verges with the wider use of the "poop-scoop" law;
- leave the law on dogs on leads untouched but create a new model bye-law to give powers to council officers to ask for dogs to be put on a lead if it is necessary to prevent nuisance or annoyance.

John Mills in the attached note criticises these proposals strongly and suggests that:

- (i) the poop scoop laws should apply to all public places where the litter law applies, including heath and woodland.
- X John would like to see exemptions only where use of a poop scoop would not be practicable eg in brambles;

(ii) that a stronger law on leads is needed than that proposed by the Home Office. For example, he suggests that byelaws should be available which require dogs to be kept on leads in parks at times when small children may be there and/or requiring muzzles for large dogs off the lead. He also thinks that local authorities should not have to show the need for such byelaws for parks and open spaces;

Agreed ✓

(iii) powers to ban dogs from public places should be more freely available. Local authorities should be able to exclude dogs from all but a designated area of a park, rather than the present assumption that they can go everywhere unless specifically excluded;

Agreed ✓

(iv) that the powers allowing local authorities to apply the poop scoop law to amenity greens in public housing estates should be clarified. At present he says the law deters local authorities from applying this power because it can only be used in estates where dogs are allowed (whereas in many they are banned);

Agreed ✓

(v) that you should ask Mr Wakeham to look at these proposals and how they might be better presented.

Agreed ✓

On the whole, the Home Secretary's proposals strike me as sensible and constructive; and I would also agree with points (iii)- (v) of John Mills' above. However, might there not be real political difficulties in curtailing the activities of dogs as strictly as John would wish, particularly in areas many people would see as wild? It seems reasonable to me to exclude heath and woodland and other wild open spaces from the poop scoop law. And it might be seen as unreasonable by many to require all dogs to be kept on a leash in parks and open spaces during day-time hours if local authorities also are given the power to ban them except in certain designated areas of parks.

*This is a big issue
power*

Are you content with what the Home Secretary proposes?

*See above
not*

Do you want to pursue John's points and if so which?

*See above
M.T.*

CS

Caroline Slocock

22 June 1990

*What happened
to the suggestion
that certain types
of dogs should
have to wear muzzles*

CGP



BP 22/6
CPS

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

20 June 1990

Dear Carline

DOG BYE-LAW REVIEW

at first

Thank you for sending me a copy of your letter of 18 June to Gillian Baxendine about dogs.

The Home Secretary agrees with the Prime Minister's suggestion that the outcome of the bye-law review should be announced soon, separately from the consultation document. In order to get the best publicity for the Government's proposals on dogs, the Home Secretary thinks it would be preferable to make both announcements on the same day.

The Prime Minister asked for a full report on the proposed changes to the dog bye-laws. Catherine Bannister's letter of 27 June 1989 explained that it is the responsibility of local authorities to make and enforce bye-laws. There are no powers to require councils to adopt these measures and the initiative must come from them. Bye-laws on dogs have generally been popular with local authorities and we expect that the suggested new model bye-laws would also be popular. I enclose a copy of our proposed announcement, which describes the Home Secretary's conclusions in detail. Briefly, he proposes, as many authorities have asked, to make the "poop-scoop" bye-law more freely available for parks. Second, the existing ineffective "no fouling" bye-law for pavements would be replaced by a further extension of the "poop-scoop" bye-law. Third, the dogs on leads bye-law would not, in general, be made more readily available, but a new model bye-law has been developed for designated parks and open spaces. This would give power to a council officer to ask for a dog to be put on a lead if he considered it necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance.

On the "Control of Dogs" consultation paper, we have made the changes to the draft requested in your letter of 18 June - including the date for responses which you and Gillian Baxendine agreed should be 15 November.

In view of the fact that the debate in the House of Lords will not now take place on 26 June (and probably not until 5 July), there seems to us considerable advantage in delaying these two announcements until next week. If we publish this week it will give the RSPCA time to produce a rebuttal to the proposals in the consultation paper.

2.

I have sent copies of this letter to Gillian Baxendine (Lord President's Office) and the others to whom you copied your letter.

*Jan,
Sara.*

MS S J DENT

Ms Caroline Slocock
No 10 Downing Street
LONDON, S.W.1.

DOG BYE-LAW REVIEW: DRAFT ANNOUNCEMENT

QUESTION

To ask the Secretary of State for the Home Department, if he will make a statement on his review of model bye-laws for the regulation of dogs in the light of comments received in response to the Department of the Environment's consultation document "Action on Dogs".

ANSWER

(Mr. Lloyd)

On 10 August 1989 the Department of the Environment published a consultation document "Action on Dogs" which sought views on various issues relating to dog control, including the content and operation of the Home Office model dogs bye-laws. Comments were submitted by 126 local authorities and other bodies and these have been carefully considered in the light of our experience in dealing with dog bye-law applications since they were last reviewed in 1987.

Our present policy on bye-laws prohibiting the admission of dogs to designated enclosed areas met with little comment. The Home Secretary has decided that these bye-laws should remain unchanged.

By far the largest number of those commenting suggested making the "poop-scoop" bye-law more freely available. This makes it an offence for a person in charge of a dog to fail to remove any faeces it might deposit in designated parks, recreation grounds and open spaces. At present the bye-law may be applied to any children's playground or sports pitch, but only to other parks and open spaces provided that there are alternative uncontrolled areas. Experience of operating the bye-law has shown that, while it has been successful in designated parks, uncontrolled areas nearby tend to become heavily fouled. We consider that it is reasonable to expect dog owners to clear up after their pets in places that are used by other members of the public, including children. Therefore my rt hon. and learned Friend has decided that 'poop-scoop' bye-laws should now be made freely available to local authorities to apply to any park, recreation ground or open space where it is considered appropriate - without the need to provide alternative uncontrolled areas. But the bye-law will still not be available for areas such as heaths and woodlands and areas used by horses and grazing animals, because it remains our view that it would be unreasonable to expect people to clear up after their dogs there.

We have also considered the operation of the 'no fouling' bye-law which makes it an offence simply to allow a dog to foul a pavement next to a carriageway or an adjacent grass verge up to 4 metres wide. Although most local authorities have this bye-law, it has been criticised on various grounds: it

provides no protection either for footpaths which are not adjacent to a highway or for pedestrianised areas; it is ineffective and difficult to enforce; prosecutions are rare; and pavements remain fouled. Since our aim is to encourage dog owners to remove dog mess from the environment, my Rt Hon and learned Friend proposes to delete the ineffective "no fouling" bye-law from our model series and replace it with a further extension of the "poop-scoop" bye-law.

In addition to recreation grounds and open spaces, the "poop-scoop" bye-law will be freely available for local authorities to apply to any footpath in a built up or residential area whether or not it is adjacent to a highway. The bye-law can also be applied to any grass verge which is maintained in good order and is adjacent to a highway. It will also be available for any pedestrianised area owned by a local authority such as a shopping precinct.

Finally, we have also considered the operation of the "dogs-on-leads" bye-law. This compels owners to keep their dogs on leads at all times in designated places. It may be applied in limited circumstances to parks and other open areas where a need can be shown. Some have called for the increased availability of such bye-laws, even suggesting that owners should be required to keep their dogs on leads in all public places. But the Home Secretary believes that this would be wrong, since for many pet owners in urban areas the only places available to them to exercise their dogs off the lead are parks and open spaces. My Rt Hon and learned Friend has decided that the availability of this bye-law should remain unchanged.

However, we do recognise that in some parks and open spaces, where in normal circumstances it is appropriate to allow dogs to exercise off the lead, there are occasions when a dog may behave in such a way as to annoy other users of the park and so we have developed a new model bye-law. This will give powers to council officers to ask for dogs to be put on a lead if it is necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance. This bye-law will be available to local authorities to apply to designated parks and open spaces where a need can be demonstrated.

I am grateful to all those bodies that commented on the bye-laws and I hope that the increased availability of the 'poop-scoop' bye-law will strengthen the ability of councils to deal effectively with the fouling of public areas by dogs. Details of this statement, together with the wording of the new model bye-laws, will be circulated to local authorities shortly.

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

18 June 1990

Dear Gillian,

CONTROL OF DOGS

The Prime Minister was grateful for the Lord President's minute of 15 June proposing that there should be an announcement shortly of a consultation exercise on measures to control dangerous dogs. The aim would be to announce these measures before amendments to the Environmental Protection Bill are debated which propose a dog registration scheme.

I would be grateful if you could ensure that the following is seen only by those with a clear need to know.

The Prime Minister recalls that the Government's proposals on the control of stray dogs were omitted from the Environment Protection Bill on the grounds that their inclusion would open the way to damaging amendments on dog registration schemes. Given that it has in the event proved possible to table such amendments, the Prime Minister very much regrets that that opportunity was needlessly lost. In the circumstances, she accepts that the issue of this consultation document is the best way forward, but she has suggested a number of changes which will help to stress that the Government wishes to address this problem with urgency. She has asked that the beginning of paragraph 43 of the draft consultation document should be amended so that it asks simply for comments: at the moment a reading between the lines would underline the fact that there is no real prospect of a legislative slot in the near future. She would also like to see a shorter consultation period, bringing forward the deadline from December to, say, September. Paragraph 40 of the document refers to proposals relating to the use of existing by-laws on dog fouling and control. The use made of these by-laws has already been subject to consultation, and the Home Secretary plans to make an announcement about the Government's proposals shortly. In view of this, it seems inappropriate to include these in a consultation document. The Prime Minister suggests that they should therefore be announced now, but before he does so she would be grateful for a full report from the Home Secretary on what is proposed, particularly on the point raised last year about the local authorities not taking full advantage of the powers open to them.

I am sending copies of this letter to Sara Dent (Home Office), Kate Bush (Department of the Environment), Michael Harrison (Ministry of Agriculture, Fisheries and Food), Jim

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- 2 -

Gallacher (Scottish Office), Stephen Williams (Welsh Office), Murdo Maclean (Chief Whip's Office), Robert Canniff (Office of the Chancellor of the Duchy of Lancaster), Gillian Kirton (Office of the Lord Privy Seal), Greg Shepherd (Government Whips, Lords), Juliet Wheldon (Law Officers' Department), and Sonia Phippard (Cabinet Office).

Yours sincerely,

Caroline

CAROLINE SLOCOCK

Gillian Baxendine,
Lord President's Office.

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Gillian
Laws①
PRIME MINISTER

CONTROL OF DOGS

You have just received a minute from the Lord President suggesting that the Government should issue very shortly a consultation document on dogs. This would canvass views on the ideas discussed recently in Cabinet on dogs, particularly your suggestion that private ownership of certain breeds might be banned; and invite further views on proposals on which consultations were made last year, including those on strays. A summary is flagged.

The immediate urgency is that amendments advocating a dog registration scheme have been tabled to the Environment Protection Bill; and there is a real risk of defeat. The Lord President, who has been chairing a group on this, hopes the consultation document will help to head off support for these amendments.

On the face of it, announcing another consultation exercise is not a very proactive response to public concern. But the proposal to ban the ownership of certain breeds might be very contentious (although I believe it will be popular). Some consultation is therefore necessary. And there is plenty of time for consultation, given that a legislative opportunity will not be available until probably after the next election.

John Mills in the attached note makes some helpful suggestions for strengthening the presentation of the consultation document by:

- omitting a passage which makes it clear that legislation is unlikely to be possible for some time and shortening the period of consultation from December to September to give a greater sense of urgency;

- taking out proposals on strengthening the use of certain byelaws on dog fouling and keeping dogs on a leash as they are to be announced shortly and need no further consultation. John suggests you ask for a report on these from the Home Secretary before an announcement is made.

John's note also reminds you that the proposals on stray dogs were taken out of the Environment Protection Bill, despite your protests, because it was argued that they would open the door to amendments on dog registration. It is irritating that a key legislative opportunity to take action on dogs was lost for what in the event has proved little good reason.

Content to endorse John Mills' points?

Yes

Do you want to register irritation about the above point?

CSS

Caroline Slocock
15 June 1990

*express regret that the proposals
were dropped
me*

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PRIME MINISTER

15 June 1990

CONTROL OF DOGS

The Lord President is seeking urgent agreement to a consultation paper, so that it can be published next week ahead of a debate on Lords amendments to the Environment Protection Bill concerning a national dog registration scheme.

The paper follows up discussion in Cabinet on 3 May on proposals by the Home Secretary to strengthen the criminal law on dangerous dogs out of control and on strays. The paper also floats (paras 21-25) your idea that ownership of certain breeds might be banned altogether, and 'fixed penalties' for recovery of strays.

It was said in Cabinet that publication ahead of the latest debate on dog registration would help the Government's cause.

There are some good and constructive ideas in the consultation paper for strengthening the law. Canvassing the options publicly is clearly sensible in view of the sensitivities. The sensitivities extend, it should be noted, to the question of local authority resources for enforcement.

But there will be criticism that the Government is simply adopting delaying tactics. It issued one consultative paper last year, and now another, with no action. The question will also be posed why the Government is now canvassing changes in the criminal law less than a year after last year's Dangerous Dogs Act.

There is some truth in this. You will recall that measures to control strays were canvassed in last year's consultative paper but dropped (with your reluctant agreement) on the grounds that they would widen the Environmental Protection Bill and thus open the door to dog registration amendments. But these have happened anyway, and all that has happened is that the Government has lost a window of opportunity.

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But on the other hand the ideas now being put forward are new and constructive and should generate serious debate. With luck this will divert attention from the narrow focus of registration schemes. And the fact is that a legislative slot before the next election is unlikely so that what comes out of this consultative process will probably become a part of your election platform. (Labour, incidentally, has proposed nothing but a national registration scheme).

So, on balance, publication is worthwhile in order to move the debate forward.

Comments on the Paper

First, two procedural points seem important:

- the beginning of para 43 should be confined to asking for comments. As drafted, it is clear reading between the lines that there is no real prospect of a legislative slot. Best to avoid giving any hint of this but rather to leave it open;
- the comment period (to 1 December) is too long. It should be brought forward to, say, September, so as at least to help create a sense of urgency.

Second, paragraph 40 on byelaws is not sufficient:

- it is not consultative, but refers to a forthcoming announcement;
- it does not do justice to the questions posed on byelaws in last year's consultative document. These concerned the procedure for making byelaws and their extent and effectiveness;
- the three very modest proposals do not answer the clear

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suggestion in last year's paper that local authorities were not taking full advantage of the powers available to them. They will give no comfort, for example, to parents anxious for tougher measures to keep dogs out of parks or areas where children play.

The outcome of the review of byelaws should be announced separately, subject to consultation with you, and not thrown into the consultation paper. This can be turned into an effective free-standing announcement which will help show that the Government is taking action.

Recommendations

- Agree to publication of the document, subject to colleagues' views.
- Express regret that last year's proposals on strays (duty on local authorities to round them up) were dropped to avoid widening the Environmental Protection Bill, but that we are nevertheless faced with dog registration scheme amendments.
- Suggest shortening the consultation period, and omitting the reference in para 43 to legislative opportunities, as outlined above.
- Suggest removal of the section on byelaws from the consultation paper. Announcement of the byelaws review should be dealt with separately. Ask for a full report from the Home Secretary, particularly on the point raised last year about authorities not taking full advantage of the powers open to them.

John Mills

JOHN MILLS

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cc p/h



PRIME MINISTER

THE CONTROL OF DOGS

1. At Cabinet on Thursday 3 May we discussed briefly proposals set out by the Home Secretary in his minute of 1 May for a package of measures to control dangerous dogs. We agreed that consideration should be given to canvassing a range of options, possibly going beyond the package suggested by the Home Secretary to include the possibility of some form of ban, at least on new ownership of dangerous breeds.

2. I subsequently convened a meeting of colleagues with an interest in the various aspects of this matter, and we agreed that the best approach would be to issue a consultation paper canvassing a wider range of options. In addition to responding positively to general public concern we felt this could be helpful in resisting amendments to the Environmental Protection Bill.

3. I attach a copy of the draft which has now been produced. It reflects the Home Secretary's original proposals and the ideas we discussed in Cabinet; and builds on the proposals canvassed in the earlier "Action on Dogs" consultation paper issued by the Department of the Environment (with a parallel paper for Scotland) last year. The introduction to the paper seeks to set the general framework for debate and also to explain why we think that measures on the lines canvassed in it are preferable to a national registration scheme.

4. Colleagues considered that there is a real risk of a defeat for the Government on dog registration when amendments to the Environmental Protection Bill are debated during Lords Committee Stage. They therefore felt that there would be positive advantage, in seeking to head off such a defeat, in having this consultation paper published in good time before the debate.

We have just learned that the relevant amendments have been tabled to an early part of the Bill rather than at the end, as we had expected, and will therefore be debated on 26 or 27 June rather than in early July as we had originally envisaged. To meet our objectives, therefore, the consultation paper should be published next week and I should be grateful for your approval of it by Monday 18 June to allow time for printing.

5. I am copying this minute to the Home Secretary, the Chancellor of the Duchy of Lancaster, the Secretary of State for Scotland, the Lord Privy Seal, the Secretary of State for the Environment, the Secretary of State for Northern Ireland, the Minister of Agriculture, Fisheries and Food, the Secretary of State for Wales, the Chief Whip (Commons), the Chief Whip (Lords), the Attorney General and Sir Robin Butler.

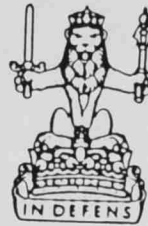
Allen Burdett

PP GEOFFREY HOWE

15 June 1990

*(Approved by the Lord
President & signed in
his absence)*

Draft 5
14 June 1990



THE CONTROL OF DOGS

A CONSULTATION PAPER

issued jointly by
THE HOME OFFICE,
THE SCOTTISH OFFICE,
THE WELSH OFFICE
and
THE DEPARTMENT OF THE ENVIRONMENT

June 1990

THE CONTROL OF DOGS

Introduction

1. There has recently been a good deal of public concern about the effects of irresponsible dog ownership including that raised by an increase in the number of reported attacks by dogs. Despite the fact that the great majority of dog owners exercise proper control over their pets in return for the pleasure and comfort which they bring, the dogs of a small minority of irresponsible owners give rise to events which cause the public concern and alarm. The general public is concerned also about an apparent increase in the numbers of stray dogs and the health and amenity effects of dog fouling.

2. In response to public concern in 1989, the Government issued its consultation papers *Action on Dogs* which proposed new duties for local authorities in relation to strays and fouling. These proposals were generally supported by both local authorities and the voluntary bodies which have an interest in the issue. At the same time, the Government announced its support for measures to reinforce the existing legislation to deal with the specific problem of dangerous dogs. These proposals were enacted in the Dangerous Dogs Act 1989, which came into force less than a year ago and significantly strengthened the courts' powers to deal with such dogs.

3. This paper brings the debate up to date and seeks views on further measures which may be needed in the light of responses to *Action for Dogs* and further experience of the operation of the legislation to deal with dangerous dogs. This debate has in the past focused on the question of dog registration, with supporters of registration arguing that no dog control measures could be effective unless enforced in the context of a national dog registration scheme. The Government rejected that position in the *Action for Dogs* papers and remains of the view that a national

registration scheme is neither a solution to the problems caused by irresponsible dog owners nor an effective means of raising revenue for dog control.

4. As far as the revenue from a dog registration scheme is concerned, this would largely be used in running the scheme itself, rather than paying for dog wardens to deal with the problems on the streets. Research carried out for the RSPCA suggests that it would cost about £20m a year simply to process registrations, renewals and changes of address. A further £22m would be needed to finance a national dog warden network. Nor would such a scheme, in the Government's view, meet the "polluter pays" principle. It is the responsible owner who would register, while the irresponsible owners who cause all the problems are unlikely to do so.

5. The Government believes that the difficulties caused by irresponsible owners need to be addressed more directly. This paper discusses a number of separate steps by which the problems of dog control might be tackled and the legislation strengthened.

PART I: DANGEROUS DOGS¹

Background

6. The principal legislation concerning attacks by dogs is the Dogs Act 1871. Where a dog is dangerous and not kept under proper control a court may order that the dog must be kept under proper control or take steps to bring about its destruction. This is not criminal legislation.

7. Following the Dangerous Dogs Act 1989, the court may now, in addition to ordering that a dog is handed over for destruction, impose a disqualification from keeping a dog in future. The 1989 Act created a criminal offence of not complying with an order of the court for which, depending on the circumstances, the maximum penalties range from £400 to £2000.

¹Part I is concerned only with attacks by dogs on people and not with dogs which are dangerous to animals and livestock.

8. In England and Wales, attacks by dogs are also dealt with by part of section 28 of the Town Police Clauses Act 1847. *Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put into fear any person or animal* is guilty of an offence and becomes liable for a penalty not exceeding £400 or imprisonment for a period not exceeding 14 days. This is criminal legislation.

9. In Scotland, the Civic Government (Scotland) Act 1982 contains provisions relating to dangerous and annoying creatures (including dogs). Under section 49(1) of the 1982 Act any person allowing *a creature in his charge* to endanger or injure any person *who is in a public place* or to give that person *reasonable cause for alarm or annoyance* is guilty of a criminal offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £100). The offence is absolute and it is not a relevant defence to claim that control was exercised but failed to prevent danger, alarm or annoyance. In addition under section 49(6) of the 1982 Act where a court convicts a person of an offence it can, in addition to any other disposal, such as a fine, order the destruction of the creature and can authorise a constable, in pursuance of such an order, to take possession of the creature.

PROPOSALS CONCERNING DANGEROUS DOGS IN GENERAL

10. Following some of the recent attacks by dogs, the Government has been reviewing this legislation. This review has suggested that there could be advantage in replacing the offence under the Town Police Clauses Act 1847 with a more modern offence. Section 49(1) of the Civic Government (Scotland) Act 1982 applies to all creatures but the Government sees merit in creating a new offence relating solely to dogs. Further strengthening of the powers of the courts so that they could specify the terms of an order to control dangerous dogs also seems worthy of consideration.

A new offence

11. One way forward would be to create a new offence of allowing a dog to be dangerously out of control. The test of 'dangerously' might be that the dog had caused, or gave reasonable grounds for alarm that it was about to cause, injury to any person.

12. The 1847 Act offence and the offence under section 49(1) of the 1982 Act apply only in a public place. A new offence could extend more widely so that, for example, it would be an offence for the dog to be dangerously out of control anywhere. *The Government would welcome views on this new offence and how widely it should apply.*

Additional powers to seize and detain a dog

13. In order to ensure the effective enforcement of the new offence and for other reasons, it may also be necessary for local authorities and the police to have additional powers to destroy a dog which appears to be dangerously out of control and to seize and detain a dog after an incident. *The Government would welcome views on these proposals.*

Powers for the courts to be able to order how a dog should be controlled

14. There might also be advantage in allowing courts to specify, if they wished, how dangerous dogs should be controlled. At the moment, a court can order, under the Dogs Act 1871, that a dog should be kept under proper control, but cannot say how this should be done. In particular it cannot use this order to require that a dog should be kept on a lead or muzzled.

15. A further possibility would be to extend this power to enable courts to secure the muzzling of a dog which had caused, or which the court considered was likely to cause, injury immediately a complaint was made and in advance of a full hearing of the complaint. In this way, it would be possible for a member of the public, a local dog warden or the police to make a complaint that a dog was dangerous and for the court

to have power to order that it should be muzzled at once, even if it would otherwise be several weeks before the full hearing of the case took place. It would be a criminal offence to disobey such an order.

16. *The Government would welcome views on the possibility of courts being allowed powers to impose muzzling and other controls on dogs and the circumstances in which that would be appropriate.*

Powers for the destruction of dogs

17. During the review of the legislation it has emerged that, in England and Wales at least, there are still some difficulties in securing the speedy destruction of some dangerous dogs. Although the Dangerous Dogs Act 1989 greatly facilitated the enforcement of destruction orders under the Dogs Act 1871, at the moment the courts have no power to order the destruction of the dog following convictions under the Town Police Clauses Act 1847.

18. This could be rectified by providing that if either a criminal offence or a civil complaint is proved, the court could, if it wished, order the destruction of the dog. A Scottish court can order the destruction of a dog under section 49(6) of the Civic Government (Scotland) Act 1982 and can authorise a constable to take possession of the animal in pursuance of such an order. *The Government would welcome views on the need for increased or additional powers to secure the destruction of dangerous dogs and to seize and detain dogs.*

PROPOSALS AFFECTING CERTAIN BREEDS OR TYPES OF DOG

19. For some time, there have been particular types of dog which have caused public alarm. At one stage, the Bulldog was regarded as particularly dangerous. More recently, Dobermann Pinschers were similarly regarded but they have not figured prominently in recent attacks. A wide range of breeds of dog, including some small dogs, have been involved in attacks of various kinds. Statistically, the largest number

of serious injuries caused by dogs is attributable to German Shepherds (Alsations), principally because they are popular and therefore more numerous. One dog which is attracting attention at the moment is the Rottweiler; another is the Pit Bull Terrier. The Government is also concerned by reports that some breeders use, as part of their planned breeding programme, dogs which are highly aggressive and which constitute a clear risk to the public. There is concern that the offspring of these dogs are bought for the purposes of fighting and other illegal activities.

Controls which might apply to certain types of dog

20. One possibility would be to require by law that dogs of a certain type or breed should always be on a lead or muzzled, other than at home. It might also be necessary to make it a criminal offence to allow such dogs to escape from home. Exceptions would have to be made for situations where the public would know that such dogs were unmuzzled, eg guard dogs or at dog shows.

Ban on ownership of certain types of dogs

21. If it were wished to go further and ban the ownership, or future ownership, of certain dogs, this might entail making it an offence to breed certain dogs; not to spay or neuter existing dogs of that breed or to destroy any puppies of unspayed bitches; or to import such dogs. If existing owners were allowed to retain their dogs for the duration of the dog's life, it would have to be recognised that it could be a considerable time from the date of commencement of legislation before the dogs of a certain type were totally banned.

22. A variation on a total ban on a particular type of dog could be a ban on domestic ownership. This would mean that it would remain possible to continue to keep certain dogs only, for example, in kennels licensed under the Guard Dogs Act 1975. This would reduce, but not entirely remove, the danger of further incidents.

Identification of breeds or types of dog

23. Dogs like Rottweilers, Dobermann Pinschers, German Shepherds, Staffordshire Bull Terriers and English Bull Terriers are recognised identifiable breeds. However, if their type or breed requires to be established there will be difficulties encountered in court, not least for the prosecution who will have to bring evidence to prove the type of dog. There would also be uncertainties for dog wardens and police officers on the spot.

24. The more difficult problem would be to recognise mongrels and other cross-breeds which comprise the majority of dogs and to avoid the use of cross-breeding as a means of evading the controls. A dog like the American Pit Bull Terrier, for instance, is not readily defined since it is a Bull Terrier cross breed. Clearly, if particular controls were to be applied to specific types of dog, an easily-applicable way of proving the breed of such dogs would need to be found.

25. If it were considered necessary to apply controls to particular types of dog, there would have to be flexible provisions to allow for additions or deletions of the types of dog in the list.

26. *The Government is anxious to canvass widely the possible measures discussed in Part I. These are summarised at a-f of paragraph 43.*

PART II: OTHER DOG CONTROL ISSUES

27. In August 1989, the Department of the Environment together with the Welsh Office, and the Scottish Office separately, issued consultation papers both of which were entitled *Action on Dogs*. The papers discussed proposals relating to strays, identification and fouling.

28. The main features of these proposals were:

- (i) to transfer the duty to deal with strays from the police to local authorities (in England and Wales, district and borough councils; in Scotland, district and islands councils);
- (ii) to clarify the power to enforce the existing requirement for dogs to wear a collar and identification tag when in a public place;
- (iii) to deal with the nuisance of dog fouling.

29. Powers to place a duty on local authorities (and others) to remove dog faeces from places to which the public has access have since been included in Part IV of the present Environmental Protection Bill.

30. The consultation papers also invited comments on the operation of the present range of dog control byelaws available in England and Wales and, in Scotland, invited views on the scope for byelaws relating to dog control measures. The Scottish paper also proposed the amendment of section 48 of the Civic Government (Scotland) Act 1982 to open the way for Scottish authorities to make byelaws relating to dog fouling.

31. Local authorities and other respondents broadly supported the proposals relating to straying and identification, subject to reservations about the resources necessary to carry out the proposed new duties. The Government was interested in a number of suggestions made by respondents on how the proposals on straying and identification might be strengthened. The Department of the Environment is therefore discussing with the Royal Society for the Prevention of Cruelty to Animals and representatives of the Joint Advisory Committee on Pets in Society some of these ideas. In Scotland, a Working Group has been set up to investigate a wide range of issues relating to dogs and to report by the end of the year. This consultation exercise is intended to inform these discussions and investigation.

SPECIFIC PROPOSALS

32. Two proposals in particular seem worthy of further consideration: first, the creation of an offence of allowing a dog to stray; and secondly, the introduction of a fixed penalty scheme for failure to comply with the requirement for a dog to wear a collar and identification tag in a public place.

An offence of allowing a dog to stray

33. At present, it is not an offence in Great Britain to allow your dog to stray. In some areas, this results in a number of "latch key" dogs wandering all day on housing estates and other public land. The *Action on Dogs* papers suggested that, as an additional incentive to owners to keep their dogs under control, there should be a specific power for local authorities to charge owners seeking to collect their dogs from detention a sum over and above the costs of kennelling. Some authorities already make use of existing general powers to make a charge of this kind and this provides an effective way of dealing with strays without the need for court action.

34. As an alternative approach, in Northern Ireland, where there was a particular problem of dogs worrying livestock, it is an offence under the terms of Article 22(1) of the Dogs (Northern Ireland) Order 1983, for the keeper (or the person in charge of the animal at the time) to allow a dog to stray. The definition of a stray is any dog which is off land owned and occupied by the keeper of the dog (or, if the keeper of the dog is a person other than its owner, off land owned or occupied by its owner also) or off other land on which it may be by permission of the owner or occupier of that land and which appears to an officer of the local authority to be unaccompanied. The maximum penalty for allowing a dog to stray is set at £200 on summary conviction.

35. It might be appropriate to extend an offence of straying to the rest of the United Kingdom. It would be important, however, to ensure that the offence was carefully defined and was not liable to catch the responsible owner whose dog, for example, escaped from its garden on a single occasion or was running some distance

from its owner when out for a walk. One means of dealing with this might be to make the offence one of persistently allowing a dog to be at large, although even this would bring with it problems of definition and enforcement. A new straying offence could complement the proposal outlined in paragraph 11 above for the creation of a new offence of allowing a dog to be dangerously out of control in a public place (or more widely). *The Government would welcome comments on the possibility of a new offence of straying.*

A fixed penalty scheme for enforcement of the identification requirements

36. The Government believes that the most effective way of identifying a dog with its owner is by enforcement of the existing requirements (contained in the Control of Dogs Order 1930) that a dog in a public place must wear a collar and identification tag. The maximum penalty for failure to comply is currently £2000.

37. It appears that this requirement is neither well known to the general public nor widely enforced. In England and Wales, powers of enforcement currently rest with the local authorities charged with animal health responsibilities. In Scotland, these powers rest with the police. The *Action on Dogs* papers proposed that the duty of enforcement should rest with the same authorities operating general dog control powers. This would mean, in England and Wales, a transfer of enforcement responsibility in the shires from the County councils to the districts (in London and the Metropolitan areas the duties are already concurrent). In Scotland, enforcement would be transferred from the police to districts and islands councils.

38. A number of respondents to *Action on Dogs* suggested that enforcement would be further assisted by the use of a fixed penalty procedure. A fixed penalty of £10 is already used for enforcement of this requirement under the Dogs (Northern Ireland) Order 1983 (as it is for other offences under the Order). The availability of a simple and streamlined means of enforcement would seem likely to encourage enforcement by authorities and therefore ensure a higher level of compliance by dog owners. Any dog found wandering without its identification tag would be liable to be picked up as a stray and held by the local authority. If it was not reclaimed by the owner within

7 days (when the appropriate fine and kennelling costs would be payable), the local authority would be entitled to have it destroyed.

39. *The Government would welcome comments on whether a fixed penalty scheme should be available for enforcement of the identification requirement in the rest of the United Kingdom. It would also be interested in the views of respondents on whether or not fixed penalty schemes might have a wider role in enforcing other dog control provisions, as they do in Northern Ireland.*

Review of byelaws

40. The Department of the Environment and the Welsh Office's paper *Action on Dogs* invited views on byelaws relating to dog control in England and Wales. The following proposals have emerged from this review. First, it was widely represented that "poop scoop" byelaws for the removal of dog faeces should be more freely available for application to parks. Secondly, the existing "no fouling" model byelaw for pavements might be replaced with a further extension of the "poop scoop" byelaw. Thirdly, dogs on leads byelaws should not, in general, be made more readily available, but a new model byelaw should be developed for designated parks and open spaces requiring dogs to be put on leads if a council officer considers it necessary to prevent nuisance or behaviour giving reasonable grounds for annoyance. The Home Secretary plans to make an announcement about these proposals shortly.

41. The Scottish Office's paper *Action on Dogs* recognised that the legislation in Scotland for regulating the behaviour of people who take their dogs into public places is not effectively enforced. Two specific examples were cited: section 48 of the Civic Government (Scotland) Act 1982 which deals with dog fouling; and section 27 of the Road Traffic Act 1988, which provides for dogs to be leashed while on a designated road. The paper invited comment on the scope for byelaws in dealing with dog control problems. The response indicated that the use of byelaws would be welcome and the Scottish Working Group on Dogs has been asked to consider the possibility of model byelaws both for dog fouling and more general dog control measures.

Education

42. There are clearly limits to how much can reasonably be expected to be achieved by legislation and a significant key to the success of any dog control measures must lie also in the education of owners in responsible dog ownership. A number of voluntary bodies and local authorities produce useful educational material and carry out valuable educational work. Discussions with voluntary bodies suggest that there may be a role for the Government in helping to co-ordinate this activity on a national basis. The Government will be pursuing this with the bodies concerned. There might also be a case for the Government itself undertaking a limited education programme through the press and media. *Comments from respondents would be welcome on how the education process can best be pursued.*

SUMMARY

43. The Government would welcome comment on the possible measures outlined in this paper and will consider, in the light of these, the opportunities for legislation. These may be summarised as follows:-

- a. *a new offence of allowing any dog to be dangerously out of control and how widely such a new offence might apply (para 11);*
- b. *additional powers for local authorities and police to destroy a dog which appears to be dangerously out of control and to seize and detain a dog after an incident (para 13);*
- c. *courts to be empowered to impose muzzling and other controls on dogs, what these should be and in what circumstances they would be appropriate (para 14);*
- d. *courts to be empowered to make an interim muzzling order (para 15);*

- e. *the need for increased or additional powers to secure the destruction of dangerous dogs and to seize and detain dogs (para 18);*
- f. *whether certain types of dog should be subject to particular controls, eg muzzling, or banned altogether. If so, the types of dog to which these measures might apply and how they could be identified (paras 19-25);*
- g. *a possible new offence of allowing a dog to be persistently at large (para 35);*
- h. *a fixed penalty system for enforcement of the collar and tag rules (para 38);*
- i. *whether fixed penalty schemes might have a wider role in enforcing other dog control provisions (para 39);*
- j. *how the education process can best be pursued (para 42).*

WHERE TO WRITE

44. Further copies of this paper can be obtained from any of the addresses below. Comments are invited by **1 December 1990**.

45. Comments from respondents in **Scotland** should be sent to the Secretary, the Scottish Working Group on Dogs, Scottish Development Department, Room 4/93, New St Andrew's House, Edinburgh, EH1 2SZ.

46. Comments on Part I from respondents in **England and Wales**, should be sent to Room 979, Home Office, 50 Queen Anne's Gate, London SW1H 9AT.

47. Comments on Part II from respondents in **England** should be sent to Room A214, Department of the Environment, Romney House, Marsham Street, London SW1 3DY or from **Wales**, to Room 2002, Welsh Office, Cathays Park, Cardiff CF1 3NQ.



N&M
at his
staff
CAS

SCOTTISH OFFICE
ST. ANDREW'S HOUSE
EDINBURGH EH1 3DG

Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Counsel
Privy Counsel Office
Whitehall
LONDON
SW1A 2AT

11 June 1990

Dear Geoffrey,

We are due to discuss with colleagues on 12 June the draft consultation paper on the Control of Dogs circulated by Home Secretary's Office on 6 June. In advance of the meeting I would like to make three points.

TIMING

As you may know, I set up a Dogs Working Group quite recently. It has met once and is to report to me by December at the latest. Its remit is wide and covers inter alia the issues addressed in the consultation paper. The current initiative is going to cause presentational and handling difficulties in relation to the Group and its Report. It is therefore very important to me that the timing of this exercise, and in particular the timing of any new dogs legislation, should be such as to allow the Working Group's Report to be taken properly into account before any new legislation is framed.

An article in the Times of 7 June suggested that we intend to legislate next session. However, my understanding from our previous meeting on 16 May was that it would not be possible to legislate this session, that next session could also be difficult and that we would need to resist pressure to commit ourselves on the precise timing of legislation. Any precipitate action on legislation would be very awkward for me although I would have no difficulty, for example, if we were to announce a firm intention of legislating in the 1991-92 session.

ENFORCEMENT AND RESOURCES

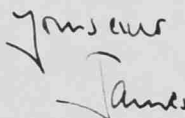
We did not discuss the enforcement and resource implications of any new measures at our previous meeting and these are not addressed in the draft consultation paper. If our proposed timetable for legislation is 1991-92 then a specific reference in the consultation document may be unnecessary but it is clear that any new measures will be ineffective without proper enforcement and the resource implications for the enforcement agencies, for example local authorities, police, the court system, are likely to be considerable. Any additional costs for local

authorities which are not acknowledged in the revenue support grant settlement fall to be met totally from the community charge. Colleagues will appreciate the sensitivity of this issue. Norman Lamont in his letter of 15 May to David Waddington has already asked us to make the best estimates we can of the likely cost implications of the proposals. These will not be easy to estimate accurately but officials are currently working on this in regard to Scotland and I think we shall need to consider this matter further once we have GB estimates.

STRAYING

The consultation paper discusses the possible new offence of allowing a dog to stray. I am content that we should consult on this proposal but I have considerable reservations about the effectiveness and enforceability of a straying offence. A responsible owner is unlikely to allow his or her dog to stray regularly. An irresponsible owner who allows his or her dog to stray regularly is unlikely to ensure the dog is wearing a collar and tag, particularly if this facilitates prosecution. If a dog is straying without a collar and tag, the probability of identifying the owner and pursuing a successful prosecution is slight. I therefore have serious doubts that the straying offence will achieve the desired result. A more effective approach to the problem of strays might be to concentrate on the proposal in the "Action on Dogs" papers that the relevant local authority should be given a statutory duty to collect, receive, hold and dispose of strays.

I should be grateful if these three points could be discussed at our forthcoming meeting. I am copying this letter to the Prime Minister, Members of H Committee, Patrick Mayhew and Sir Robin Butler.



JAMES DOUGLAS-HAMILTON

UNCLASSIFIED



Prime Minister's
CAS
IS/S
CCPM

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington QC MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

15 May 1990

Dear David

DANGEROUS DOGS

You copied to members of H Committee your minute of 1 May giving details of the proposed additional legislation to combat the problems of dangerous dogs.

2. I recognise that there is considerable concern with the problems of dangerous dogs and there is likely to be a need for further legislation to attempt to reduce such occurrences. Any new legislation could have cost implications by adding to the burdens of the police, dog wardens where they are employed, and the courts. I must therefore ask you and Chris Patten to make the best estimates you can of the likely cost implications. As you know, where a policy places a new burden on local authorities the procedure is for the sponsoring Minister to surrender equivalent provision from his central government programmes. I will therefore look to you to offer up the appropriate amount. I would expect any costs falling on central programmes to be relatively minor and therefore look to colleagues to meet these additional burdens from within existing provisions.

3. I am copying this letter to the Prime Minister, members of H Committee, Patrick Mayhew and to Sir Robin Butler.

NORMAN LAMONT

- file with CAS



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

cc:u

Prime Minister?

The Rt Hon David Waddington
Home Secretary
Queen Anne's Gate
LONDON
SW1H 9AT

CAF

185 14 May 1990

MT

Dear Home Secretary,

Thank you for sending me a copy of your minute to the Prime Minister setting out your proposals to deal with dangerous dogs. I have also seen the Prime Minister's response.

As you rightly recognise there will be some resistance to firmer measures for the control of dogs but like you I am convinced that the majority of the public will greatly welcome further legislation.

In general I am in favour with what you propose and would wish any measures to extend to Scotland. I think, however, the proposals need to be developed in more detail. To give one illustration (in relation to proposal (i) of your minute) we will have to decide how large an element of any of the three prescribed breeds a crossbreed will need to have before it has to be muzzled. This has always been a well recognised problem when dealing with dogs, especially so where an American Pit Bull Terrier is concerned because it, in itself, is a crossbreed.

I am sure, however, that a package of measures can be put together and I should be grateful if you would ensure that your officials keep in touch with mine as they develop your proposals in more detail.

I am copying this letter to the Prime Minister and other members of H Committee, the Attorney General and to Sir Robin Butler.

Yours sincerely,

Malcolm Rifkind

MALCOLM RIFKIND

Approved by the Secretary of State
and signed in his absence



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

3 May 1990

Dear Sara,

Dangerous Dogs

The Prime Minister was grateful for the Home Secretary's minute of 1 May setting out some proposals following from the review of current legislation on dangerous dogs.

She welcomes the proposals set out there as in general positive and practical steps to deal with this problem; and she hopes that they can be implemented as soon as possible. However, she has said that she would like the Home Secretary to consider prohibiting the private ownership of the dangerous breeds: Rotweillers, Doberman Pinschers and Pitbull Terriers and crossbreeds, where one of these breeds predominates. She has commented that some of the terrible accidents happen at home, when the new requirement to muzzle and keep on a lead these breeds would have no effect. On the proposal to strengthen the existing powers in the Dogs Act 1871 to require a ferocious or dangerous dog to be muzzled, she has also commented that she fears that they will do harm before being classified as such.

I am copying this letter to the Private Secretaries to members of H Committee, to Juliet Wheldon (Attorney General's Office) and to Sonia Phippard (Cabinet Office).

Yours sincerely,

Caroline

(CAROLINE SLOCOCK)

Ms Sara Dent,
Home Office.

DANGEROUS DOGS

I attach a minute from the Home Secretary setting out proposals for dealing with dangerous dogs, following a review of current legislation. The Home Secretary is anxious to have your views overnight as he has Questions tomorrow at which this subject is likely to come up. Subject to your views, he would also like to float these ideas before the press, mindful of recent criticism of the Government on this issue.

We have only received this minute today and unfortunately John Mills has not had the opportunity to comment on it. But the proposals are consistent with John's concern - which you shared - that existing requirements to muzzle and keep on a lead ferocious dogs should be effectively enforced. The proposals are:

It is worth considering whether the public should be allowed to have dangerous dogs. It should be possible to prohibit certain breeds & crossbreeds.

- to create a new requirement to muzzle and keep on a lead dangerous breeds - Rotweillers, Doberman Pinschers and Pitball Terriers and crossbreeds, where one of these breeds predominates;

- a further new offence where any dangerous dog, whatever its breed, is allowed to be dangerously out of control in a public place;

I fear it will do harm before long

- strengthening existing powers in the Dogs Act 1871 to require a ferocious dog to be muzzled;

- increasing the penalty for these offences to £2,000, the highest fine normally available in a magistrates' court;

- enabling the court to destroy the dog where there is a conviction or where a civil complaint has been proved against an owner.

These proposals strike me as practical and visible steps which will help prevent attacks as well as to deal with them once they have happened.

The first proposal seems to me to be the most important - and the most likely to strike a popular chord. It will also be controversial with certain dog lovers. I understand that the Home Secretary also has some concerns about the practical difficulties of defining and applying such a duty. How do you recognise a cross-breed on the spot, for example? In view of this, Home Office officials are considering whether they might carry out a consultation exercise on this idea. It would be a pity if this were to cause delay.

Content:

- to welcome these proposals as positive and practical steps to deal with this problem?
- to stress that these should be implemented as soon as possible?
- to agree that the Home Secretary should float these proposals before the press now?

CAS
Caroline Slocock
2 May 1990

Yes - but would he
also consider prohibiting the
private ownership of the dogs in
incident - one. Some of the terrible
accidents happen at home. put



C.P.U.

Prime Minister

DANGEROUS DOGS

As you know, in response to recent attacks by dogs, I asked for a review of current legislation relating to dangerous dogs. This minute outlines the proposals which have arisen as a result of this review and canvasses the views of colleagues.

This is a difficult area, and it has to be recognised that there would be some resistance to significantly firmer measures to control dogs. However, I am sure that, in general, public opinion would greatly welcome further legislation. In any case it may be only a matter of time before irresistible pressure to change the law builds up.

I propose that such legislation should include some, or all, of the following elements:

- (i) A new offence. Allowing a Rottweiler, or a Doberman Pinscher, or an American Pit Bull Terrier (or a crossbreed with a large element of any of them in its breeding) to be in a public place without being both on a lead and muzzled; or allowing any such dog to escape into a public place. The kind of dogs would be specified in an amendable Schedule. The local authority dog warden (where he exists) or the police would be given power to seize and detain, or if appropriate destroy, a stray dog of those kinds immediately.

- (ii) *Another new offence.* Allowing any dog, whatever its breed, to be dangerously out of control in any place to which the public had access. The test of "dangerously" would be that the dog had caused or was about to cause serious injury to any person. (The offence would be a more far-reaching and effective form of the current, but archaic, offence in the Town Police Clauses Act 1847 which it would replace).
- (iii) *Strengthening the powers of magistrates to take civil action under the Dogs Act 1871 (already strengthened by the Dangerous Dogs Act of last year) to require certain dogs to be muzzled.* If the court received a complaint that the behaviour of a dog, whatever its breed, had led the complainant to be afraid that the dog had caused, or was likely to cause, serious injury to him (or any other person) the court would be able (if it considered a person of reasonable firmness would have been afraid) to order the dog to be muzzled at all times when it was in a public place; and the court would be able to make an interim muzzling order in advance of a full hearing of a complaint or a prosecution. It would be an offence to disobey a court order.
- (iv) *Penalties.* A person convicted of any offence would be open to the highest level of fine normally available to magistrates' courts, level 5, currently £2,000.

- (v) *The court would be able to order the dog to be destroyed after the owner had been convicted of an offence or a civil complaint had been proved against him.*

These proposals might sometimes be difficult for dog wardens and police officers to enforce because of the problems of deciding on the spot on the identity of particular breeds or crossbreeds. However, the provisions should normally be enforceable and, moreover, the courts should be able to decide on identity as they will have access to expert evidence.

I would welcome the views of colleagues, and am copying this minute to other members of H Committee, to the Attorney General and to Sir Robin Butler.



1 May 1990



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

13 March 1990

Dear Kate,

DOGS

Thank you for your letter of 12 March to Dominic Morris. The Prime Minister has also seen the Secretary of State for Scotland's letter of 12 March.

The Prime Minister is content that Mr. Heathcote-Amory should announce that the Government will consider, without commitment, the two proposals set out in your letter and in your Secretary of State's earlier letter of 8 March. She agrees that there may be advantage in introducing a fixed penalty system for fines for the existing offence of failing to give a dog a collar or tag, especially if this were similar to the system of spot fining proposed for litter offences in the Environmental Protection Bill, as suggested by Mr Rifkind. However, she remains concerned about the difficulty of identifying the owner, although she accepts that this problem exists whether there is a fixed penalty system or the current system of a maximum fine. She notes that the changes you are considering will not involve in practice a transfer of responsibility from county councils to district councils, as district councils currently have the powers and resources to enforce the existing regulations. She therefore accepts that the imposition of a specific duty on district councils should be considered.

I am copying this letter to Private Secretaries to members of H Committee, Stephen Pope (Northern Ireland Office), Murdo Maclean (Chief Whip's Office), Douglas Slater (Government Whips Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,
Caroline

CAROLINE SLOCOCK

Miss Kate Bush,
Department of the Environment

KK

DOGS

Over the weekend, you saw a letter from Mr Patten about his proposals to respond to Parliamentary pressure for a dogs registration scheme (Flag C). Mr Patten had wanted to announce that the Government will consider two RSPCA inspired ideas:

- the introduction of a fixed penalty for the existing offence of failing to give a dog a collar or tag;
- making a new offence of allowing a dog to stray (which already exists in Northern Ireland).

On the first, you were concerned about the expenditure implications of apparently transferring responsibility for enforcement from county councils to district councils; and of the difficulties in any case of identifying owners. You suggested instead that strong guidance should be given to the county councils to enforce the current law.

Mr Rifkind has now written (Flag B) saying that he wishes to make a similar announcement to Mr Patten that he will be considering these proposals for Scotland. But he expresses some doubts about the practicalities - in particular of identifying owners, the potential burden on the court; and of the difficulties in defining "straying." He suggests that a system of spot fining might be introduced akin to that for litter for enforcing penalties.

DOE (Flag A) have responded to your concerns by saying that:

- the problem of identifying the owner applies whether you have a system of fixed penalties or maximum fines. But that fixed penalties make the system simpler and cheaper (the courts do not have to be used to the same extent) and that this will therefore encourage enforcement;

- county councils only have a technical responsibility to enforce the collar and tag regulations and therefore in practice what is proposed will not involve a transfer of responsibilities. District councils, not county councils, currently have the powers and resources to enforce the existing regulations (it is they who employ dog wardens, for example). DOE want to turn this power into a specific duty. This is a rather different position than that set out in Mr Patten's original letter, which DOE put down to a typing error.

All of this may be tinkering at the edges of the system and is unlikely to placate those in favour of a registration scheme. But if the current system is to be improved, it does seem sensible to do so by introducing a fixed penalty scheme rather than sticking with one which has to be enforced by the courts. There are parallels with what is being done on litter. Of course, there remains the problem of identifying the owner but presumably this could only be solved by introducing a registration scheme.

It would seem from DOE's explanation that there would be no real transfer of responsibility from the county to district councils by imposing a duty on tags and collars on district councils. And in practical terms only the districts are equipped to enforce the law. Imposing a specific duty would help to focus the district council on the importance of enforcement and would be similar to the changes being made by the Environment Protection Bill on litter.

DOE say that Mr Heathcote-Amory is to address a RSPCA organised event tomorrow and wants to say that the Government will consider these two proposals, without commitment.

In view of the points above, are you content for him to do so?

CAS

Caroline Slocock
12 March 1990

Y
26/3/90



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Christopher Patten MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1P 3EB

12 March 1990

Dear Secretary of State,

DOGS

Thank you for copying to me your letter of ~~8~~ ^{attached} March to the Lord President.

In principle I have no objection to the line you propose to take on Thursday. I suspect, however, that there may be difficulty in enforcing both the proposed fixed penalty offence for failure to comply with the requirement for dogs to wear a collar and tag and the proposed new offence of straying since enforcement would depend upon proper identification of the owner.

On collar and tag the arrangements will have to be carefully considered in order to ensure that the penalty has an immediate impact on the offender (assuming he or she could be readily identified which may not necessarily be the case) and to minimise the additional burdens on the prosecuting authorities and the courts. The arrangements which we have agreed in respect of litter offences under Clause 72 of the Environmental Protection Bill might be a precedent worth considering.

The idea of making it an offence to let a dog stray is not without difficulty, which you rightly recognise. For example there are problems in defining the offence and there might need to be defences for the owner whose dog is genuinely lost. Again, identifying the offender in the case of stray, unidentified dog will also be a problem and we must also be mindful of the additional burdens of investigation which such an offence would create. Both suggestions are, however, worth further consideration in the light of the Northern Ireland experience and I understand that one of my officials is to accompany yours when they visit Northern Ireland later this month.

Like you, I propose to explore further with relevant interests including COSLA, SSPCA, NFUS, the Scottish Landowners' Federation and the Scottish Kennel Club our "Action on Dogs" package, which included muzzling, together with other possible measures such as the proposed straying offence and the fixed penalty for failure to wear a collar and tag. My officials will be writing to these bodies this week and I would wish to make a parallel announcement for Scotland on Thursday. As

James Douglas-Hamilton will have withdrawn from the Bill Committee by then, I would propose to do this by way of a Press Release but it would be helpful if you could refer briefly in your own statement on Thursday to the fact that I also intend to explore dog related issues further with relevant interests in Scotland. I would suggest that your officials liaise with mine on a suitable form of wording.

I note what you say about the difficulty of holding the line on registration when the Bill is in the Lords. As you know from our earlier round of correspondence in December, I was in favour of your initial proposal to consider registration and whilst I accept the force of the Government arguments against a registration scheme, it is clear that this particular debate will continue to run.

I am copying this letter to the Prime Minister, to H Committee colleagues, Tim Renton, Berti Denham, Peter Brooke and to Sir Robin Butler.

Yours sincerely,
Len Doughty

pp MALCOLM RIFKIND

(Approved by the Secretary
of State and signed in his
absence)



A

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Dominic Morris Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

12 March 1990

Dear Dominic

DOGS

Your letter of today records the Prime Minister's comments on my Secretary of State's letter of last Wednesday on the subject of dogs.

The Prime Minister raises two particular points. First, she is concerned that a fixed penalty scheme for the enforcement of the collar and identification tag requirement is likely to be ineffective because of the problem of tracking down the address of the owners. This problem arises of course whether an authority is attempting to enforce the requirement in the normal way through the courts or via a fixed penalty scheme. One of the major arguments in favour of a fixed penalty scheme is that it might be perceived by the enforcing authorities as a less expensive and simpler enforcement procedure than the route through the courts and that they would therefore pursue enforcement with more vigour.

The Prime Minister also suggested that, rather than contemplate shifting the responsibility for enforcement from the shire counties to the districts, we should encourage the counties to do more. Due to a misprint in my Secretary of State's earlier letter it may not have been clear that the counties currently play no role in everyday dog control matters. The fact that they have a statutory role in enforcing this requirement, among their other animal health responsibilities, is largely a matter of historic accident, deriving from the link between identification and rabies control. It is the district councils who currently have powers (and, we propose, in future the duty) to collect up, hold and dispose of strays and make and enforce anti-fouling and other dog byelaws. As the Prime Minister will be aware, a number of them employ dog wardens to carry out this function. The addition of the duty to enforce the collar and tag requirement would complement these other functions.

I should emphasise that my Secretary of State is proposing an announcement only that we are considering the options set out in his letter, with no commitment as to the outcome. As his letter mentioned, officials here are proposing to discuss with Northern Irish colleagues how the fixed penalty scheme and other dog control measures operate in the Province. This will provide an objective yardstick against which to measure the representations made by the RSPCA and others.

Mr Heathcoat-Amory has now accepted an invitation to address an RSPCA-organised conference on dogs tomorrow afternoon, in advance of Thursday's Committee debate on Dame Janet Fookes' amendment. I would therefore be grateful to know as soon as possible whether the Prime Minister is now happy for Ministers to make the announcement as my Secretary of State has proposed.

A copy of this letter goes to the Private Secretaries to members of H Committee, Stephen Pope (Northern Ireland Office), Murdo Maclean (Chief Whip's Office), Douglas Slater (Government Whips Office) and Sonia Phippard (Cabinet Office).

Yours

KATE BUSH

KATE BUSH
Private Secretary



file
Bc Pw:

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

12 March 1990

Dear Kate,

DOGS

The Prime Minister has seen your Secretary of State's letter to the Lord President of 8 March.

She doubts that the fixed penalty will do the trick; it would be impossible to track down those owners who are irresponsible. She feels, therefore, that it would be better for your Secretary of State to announce that strict guidance is being given to the County Councils to carry out their existing enforcement duties for the existing penalties on owners who fail to put collar and identification tags on their dogs. If this cannot be enforced it is unlikely that other measures could be.

A copy of this letter goes to the Private Secretaries to members of H Committee, Stephen Pope (Northern Ireland Office), Murdo Maclean (Chief Whip's office), Douglas Slater (Government Whips Office) and Sonia Phippard (Cabinet Office).

yours sincerely

PP. 

(DOMINIC MORRIS)

Miss Kate Bush,
Department of the Environment.

PRIME MINISTER

DOGS

Dame Janet Fookes has tabled an amendment to the Environmental Protection Bill to provide for a national dog registration scheme. The amendment is due to be discussed next Thursday.

The attached letter from Chris Patten seeks clearance to announce that the Government will consider two measures which will go some way towards meeting the RSPCA/dog registration lobbies concerns:

- to impose a fixed penalty (the amount to be set by local authorities) on owners whose dog fails to wear a collar and tag and to transfer responsibility for enforcement from county councils to district councils;
- to explore the possibility of a new offence of allowing a dog to stray. This is the case in Northern Ireland and Chris Patten wants his officials to see how they are enforcing it.

The first question is whether an announcement on these lines would take the steam out of the debate on Thursday on dog registration schemes. I doubt it. It is important to meet the arguments against a registration scheme head on.

Do the proposals makes sense in their own right? Certainly, stronger enforcement on dog tags is essential and the districts are more likely to do it than the county councils. You will want to consider whether now is the time to announce a transfer in responsibility rather than telling the counties to do what they are supposed to. One of the local government complaints about the community charge is that new duties are imposed on them without new resources to match (the returns from fixed penalties, as with litter, go straight to the Treasury). If the change were made, Chris Patten would probably need to be in a position to say that he would look case by case at next year's RSG settlement to see whether additional help is needed to districts to meet some of the extra enforcement cost.

The second of Chris Patten's proposals looks uncontentious; it is surprising that DOE have not studied Northern Ireland's experience before.

Agree Chris Patten should make a announcement in the terms he proposes? *I don't think the "fixed penalty" will do the trick. We shall never join the order.*
Or

Prefer that he should instead announce that strong guidance is being given to the counties to enforce the existing penalties on owners of dogs who don't wear tags?



DOMINIC MORRIS

9 March 1990

Yes - if we can't enforce this, we shall not be able to enforce other measures, not

C:\wpdocs\parly\dogs



cc PA

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:
Your ref:

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1

8 March 1990

Dear Lord President

DOGS

I wrote to H Committee colleagues on 7 December about the outcome of the consultation exercise "Action on Dogs". I was very grateful to you and colleagues for their comments on my proposals and I am writing to let you know how I propose to take matters forward.

In the light of the views expressed by colleagues on the registration issue, we have been exploring how we might otherwise meet some of the concern expressed by the Parliamentary dog lobby, the RSPCA, local authorities and the animal welfare organisations. This exercise has been given added impetus by the fact that Janet Fookes (supported by Hugo Summerson) has tabled a New Clause to the Environmental Protection Bill which would require me to establish a national dog registration scheme. The clerk to the Committee has taken the view that this does fall within the scope of the Bill; it seems likely to be debated on Thursday 15 March.

Discussions which my officials have had with the RSPCA and others suggest that they are interested in pursuing a change to the present legislative position, in addition to the package set out in "Action on Dogs", on two issues in particular. They have suggested that the existing requirement for dogs to wear a collar and tag should be made a fixed penalty offence, enforceable by the district council, as it is in Northern Ireland. Although failure to have a collar and identification tag currently attracts a maximum penalty of £2000, it is rarely enforced and the enforcement authority in the shires is the County Council, which as on other dog control responsibilities. We are very keen to encourage the wider enforcement of the identification requirement and the fixed penalty approach is in my view an attractive one.

A number of respondents to our consultation paper also proposed that allowing a dog to stray should be made an offence in itself, as is also the case in Northern Ireland. Although there may be problems in defining the nature of the offence, we certainly feel that this idea

is worth pursuing further. My officials will be visiting Northern Ireland shortly to look at the operation of this, and the other dog control provisions in force in the Province.

The RSPCA and the Joint Advisory Committee on Pets in society (of which Janet Fookes is Vice Chairman and which represents a wide range of animal welfare, local authority and veterinary organisations) have responded very positively to our suggestion that we should discuss these ideas with them further. We have of course given no commitment to accepting these ideas nor to a date for legislation on any element of the "Action on Dogs" package. Nonetheless, I think we can respond positively to Janet's New Clause in terms that we are actively pursuing with the RSPCA and JACOPIS a number of suggestions from them which would strengthen our "Action on Dogs" package and which offer in our view more direct and effective measures to deal with the problems caused by dogs in the local environment. I think that we should also express a wish that the RSPCA should divert its campaigning and publicity resources away from the registration issue, which we would dismiss as an irrelevancy, and into the more high-profile promotion of responsible dog ownership in all its aspects.

I think that an announcement on these lines would be a constructive response to Janet's New Clause and one which would provide a useful basis of resisting subsequent attacks on the registration issue. Although I am confident that we will be able to resist the attack in Commons Committee, Alexander Hesketh is far from confident that we will be able to hold our ground on this when the Bill is in the Lords. I would be very grateful to know, by Monday 12 March at the latest, if you or any colleague is not content for us to make an announcement on these lines.

I am copying this to the Prime Minister, to H Committee colleagues, Tim Renton, Bertie Denham, Peter Brooke and to Sir Robin Butler.

CF S Bosh

PP CHRIS PATTEN

(Approved by the Secretary of State
and Signed in his Absence)





176
EAM

cc PU

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

9 August 1989

DANGEROUS DOGS ACT

Thank you for your letter of 4 August which the Prime Minister has seen and noted.

I am copying this letter to Roger Bright (Department of the Environment).

CAROLINE SLOCOCK

Miss C J Bannister
Home Office

685

From: THE PRIVATE SECRETARY

CCP-H



Pamie Minister 2

This seems to
deliver what you
wanted. *CPS*

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

4 August 1989

8/e *Yes* *MT*

Dear Caroline

Thank you for your letter of ~~5~~ ¹¹ July about dangerous dogs.

We made rapid progress with the passage through Parliament of the Dangerous Dogs Act, which received Royal Assent on 27 July. This has meant that a Circular advising of the coming into force of the new provisions on 27 August can shortly be issued. The Circular will contain a direction to Chief Constables and courts on the need for strict enforcement of the muzzling provisions of the Town Police Clauses Act 1847 and will advise on the interpretation in law of the terms "ferocious" and "dangerous" dogs.

On dog fouling, the byelaws which regulate dogs were thoroughly examined recently in the context of the evaluation of the "poop-scoop" byelaw experiment. The present set of models were approved by Ministers in April 1987, when the model byelaw booklet was issued to local authorities. However, in the light of the proposed new duty on local authorities to deal with strays and to clear up dog faeces, it has been agreed that the Department of the Environment consultation paper on dogs will request views on whether these model byelaws could be further improved or extended.

I am copying this letter to Roger Bright at the Department of the Environment.

Yours
Catherine

MISS C J BANNISTER

Ms Caroline Slocock
No 10 Downing Street
LONDON, S.W.1.



CS

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

5 July 1989

Dear Catherine

DANGEROUS DOGS

Thank you for your letter of 27 June which the Prime Minister has seen.

The Prime Minister still considers that immediate guidance should be issued about the enforcement of the law on muzzles in the Town Police Clauses Act 1847. The aim of guidance would be to encourage the police to exercise their power under this Act to ask a dog owner to muzzle his or her dog whenever they see dogs which they think may be ferocious running free in busy places. The Prime Minister appreciates that it is ultimately for the courts to decide whether a dog is "ferocious" but understands that the Act gives the police discretion on the spot to decide, *prima facie*, whether a particular dog is or is not ferocious. She imagines that it must be possible to give broad guidelines about the circumstances in which a dog may be potentially ferocious without implying that all dogs of a particular breed fall into this category in all circumstances.

She is doubtful about the advantages of linking the definition of "ferocious" in the 1847 Act to that of a "dangerous" dog in the Dogs Act 1871. The definitions appear to be designed for very different purposes. The 1847 legislation enables potential dangers from dogs to be assessed and anticipated. The classification of dangerous dogs in the 1871 Act, on the other hand, is designed to apply to dogs that have demonstrated that they have behaved dangerously.

On dog-fouling, the Prime Minister considered that there were certain shortcomings in the current model byelaws you describe. In particular, she would be grateful if your Department could review them urgently, in consultation with the Department of Environment, to ensure that they are an adequate weapon for local authorities to back up their new litter duty.

I am copying this letter to Roger Bright in the Department of Environment.

Yours sincerely,

Caroline Slocock

CAROLINE SLOCOCK

Miss C. J. Bannister
Home Office

DBS

PRIME MINISTER

DANGEROUS DOGS

The Home Office have now responded to your proposals about dangerous dogs. Their letter is at Flag B.

John Mills has minuted you on the letter and this is at flag A.

Muzzles

The use of existing powers to restrain ferocious dogs is hampered by an unclear definition of what constitutes a "ferocious" dog. The Home Office argue that a definition of a "dangerous" dog in the new legislation would help. I think John Mills has a point. The two Acts concerned are very different pieces of legislation and linking them in the way suggested holds up action which might be taken now to enforce the law on muzzles. Of course it may that the law on muzzles is in practice unworkable. But I think it would be useful to press the Home Office to look again at this in the way John Mills suggests.

Dog Fouling

The problem seems partly that the Home Office cannot force local authorities to make byelaws. But they can place emphasis on the need for them. John also sees limitations in the model byelaws which currently exist. Again, perhaps we should press the Home Office to look at this more closely.

Do you agree to John Mills' recommendations?

CAS

Caroline Slocock

30 June 1989

Yes

A
29 June 1989

DOGS

The Home Office's note is disappointing and a recipe for inaction. It does not meet the Prime Minister's concern about the need for more effective enforcement of the 1847 Act on muzzling and for tougher action against dog fouling. It has not been cleared with DOE and as a result falls short in relation to the new litter duty on local authorities.

Muzzling

The Home Office in effect proposes no action until the amended Dogs Act is passed. Even then, it is vague as to what guidance on the 1847 Act may be appropriate.

Yet the Town Police Clauses Act is tough, existing law which, if properly advertised and used, would do much to allay public concern about uncontrolled dogs in parks and streets.

Linking any guidance on 'ferociousness' with the same on 'dangerous' (the 1871 Act) is likely simply to cause confusion as between the two terms. In reality the two Acts are quite separate. The 1871 Act is about destroying dogs classified dangerous because, for example, they have bitten someone. The 1847 Act is however much more general. It requires a police officer to use his judgement as to whether large, fierce-looking dogs (and maybe some small ones too) ought to be running free in busy places. It enables him to say to the owner: put it on a lead or muzzle it; or else I can arrest you.

It is the effective exercise of this judgement that should be the Government's object, and the purpose of guidance to the police and the public generally. It needs also to be made clear to owners that if it is reasonable to assume that their dogs are or could be regarded as ferocious, they should be muzzled or kept on the lead at all times.

This does not depend on amended legislation to destroy dangerous dogs; it is a more immediate way of allaying public concern about the situation in parks and streets where so many big dogs do not seem to be under the full control of their owners. And it is existing law, which there can be no excuse not to enforce.

Dog Fouling

The model bye-laws seem quite inadequate. They also seem out of line with what we shall expect of authorities under the new litter duty. For example:

- it is not an offence to foul the highway itself;
- the obligation to remove dog faeces should be universal. As it stands it is an offence only in a designated area but provided there is somewhere else where people do not have to clean up after their dogs;
- they fence off children, not dogs. The Prime Minister suggested it should be the other way round.

If the new litter duty is to be successful in regard to dog faeces it is only right that the model bye-laws equip local authorities with the necessary powers. We do not want them claiming that the legal tools they have are inadequate.

Review, in conjunction with DOE, is urgently needed. It is nonsensical to have bye-laws which specifically allow people not to clear up their dogs' faeces in certain areas.

Recommendation

The Home Office should be pressed into greater urgency to meet the Prime Minister's two key concerns on enforcement and dog fouling. Specifically, it should be invited

- to proceed with preparing guidance to the police, dog-owners and the public about enforcement of the muzzles law without waiting for the amended Dogs Act, emphasising the discretion the 1847 Act gives the police on the spot to decide, prima facie, whether a dog is or is not 'ferocious';
- to review urgently, in consultation with DOE, the model byelaws on fouling to ensure that they are an adequate weapon for local authorities to back up their new litter duty.

Louise Atkinson
for

JOHN MILLS



*Awaiting
advice from
John Mills*

CEPU
HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

27 June 1989

Dear Caroline

DANGEROUS DOGS

Thank you for your letter of 12 June in which you ask for further work on a number of additional ideas to do with dogs. The question of muzzling falls principally to the Home Office.

The present position is that it is an offence under the Town Police Clauses Act 1847 to have an unmuzzled ferocious dog at large (i.e. off a lead) in a street (which is now interpreted as a street, park or open space under the control of a local authority). The penalty for this offence is imprisonment for up to 14 days or a fine of up to £400.

Ministers agree that stricter enforcement of this seldom-used provision could form an important part of the Government's response to current concern over dogs. Mr Hogg drew attention to seriousness of offences under the 1847 Act in the adjournment debate on 15 June (Col 1193).

Ministers are also considering the form which any publicity or guidance might take. In part, this depends on the progress which can be made in finding a legislative opportunity for implementing the Home Secretary's proposals to deal with dangerous dogs. We would like to avoid giving publicity to the inadequate provisions in the Dogs Act 1871 *until we have found a legislative opportunity.*

Legal advice is that it is for the court to determine whether a particular dog should be regarded as "ferocious" and that it is not possible to give guidance about particular breeds. To do so may, in any case, risk compromising our position that it is not the breeds which are dangerous (hence no need for registration) but the owners who are irresponsible.

But nevertheless in theory it remains open to any court to take the view that *prima facie* certain breeds are "ferocious" unless the owner had specific reason to believe otherwise for his particular dog, or, for instance, that dogs of certain breeds when exercised in twos and threes are *prima facie* more "ferocious" than when exercised singly. These are points which will be taken up when Ministers are considering the form which any publicity or guidance might take.

We expect that the decision about how legislation should be handled will be taken *later this* week and then we will know whether there is still a possibility of a Dangerous Dogs Bill reaching the statute book this session.

Because our proposals for legislation rest on the Dogs Act 1871, they contain the test that a dog is "dangerous". If we are to stimulate use of the new powers, the police and courts will need both to know about them and to reach a view as to what is likely to be regarded as a "dangerous" dog. This seems to us the best opportunity, providing it is not too long delayed, to give whatever guidance may be possible as to what constitutes a "ferocious" dog under the Town Police Clauses Act 1847.

As far as dog fouling is concerned, the Home Secretary is the confirming authority for byelaws which local authorities may make to control dog fouling in public places. We have developed a comprehensive set of model byelaws which may be briefly summarised as follows:

- (a) **No fouling:** - this makes it an offence for a person in charge of a dog to permit it to foul a footway or grass verge (up to 4 metres wide) adjacent to the highway.
- (b) **'Poop-scoop':** - this makes it an offence for a person in charge of a dog to fail to remove any faeces deposited by the dog in designated places. This may be applied to any ground used wholly or mainly as a childrens' play area or as a sportsground and also to other grounds such as parks, recreation grounds and open spaces, provided that there is somewhere else people can exercise their dogs without having to clear up after them. "Poop-scoop" byelaws may also be applied to areas of beach not covered by a dog ban and promenades.
- (c) **Dog bans:** - this makes it an offence to allow a dog into designated enclosed parks, ornamental gardens, childrens' playgrounds, paddling pools, sand pits and beach areas. A ban may be applied to wholly enclosed grounds or to enclosed parts of unenclosed grounds, such as childrens' play areas.
- (d) **Dogs on leads:** - this requires dogs to be kept on leads and restrained from behaviour giving annoyance. This byelaw may be applied to areas where local authorities can demonstrate a particular need, such as new childrens' playing areas, bowling greens, ornamental gardens, areas where there are substantial populations of wild fowl and other animals, and on promenades.

These model byelaws were issued to borough and district councils on 7 April 1987. Since that date 25 local authorities have made beach ban byelaws and 32 have applied 'poop-scoop' byelaws. There are, however, no powers to require local authorities to make byelaws; any initiative must come from the local authority itself and enforcement is a matter for the local authority and the local police.

Yours sincerely
 Catherine Bannister

MISS C J BANNISTER



Cite SM
cc89

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

12 June 1989

Dear Roger,

DOGS

The Prime Minister has seen your Secretary of State's letter of 8 June to the Lord President and warmly endorses what is proposed there and in the Home Secretary's letter of 9 June for the control of dogs. She agrees, subject to the views of colleagues, to an announcement of these proposals on Wednesday in conjunction with the Home Secretary. As far as costs are concerned, she is pleased to note local authorities should be able to meet these from the community charge.

However, the Prime Minister would like to see pursued a number of further ideas. These fall mainly to your Secretary of State, but I am copying this letter to the office of the Home Secretary, with whom you will need to liaise.

She would like to see more effective enforcement of the existing law on muzzles and leads, and in particular the requirement that 'ferocious' dogs must be muzzled if off the lead in urban public places. Immediate and effective publicity may be needed to achieve this, coupled with clear guidance on the breeds considered ferocious. She believes that proper enforcement of the law on muzzles and leads may go a long way to easing the dangerous dog problem and hopes that this can be put in hand straightaway.

On dog-fouling, the Prime Minister believes that tougher action is needed to meet the concern of parents about health hazards and unpleasantness experienced by their children. She would like to see special measures to tackle the problem in parks and play areas. She would be grateful if your Secretary of State could look at the options for 'dog-free' areas; and in particular consider the advantages of inviting authorities to designate:

- park/play areas where dogs are absolutely prohibited;
- in other parks, dog areas, ie. where the dogs are fenced off from the children.

The Prime Minister appreciates that the proposals on dog-fouling in particular will take some time to be developed. She is anxious that consideration of the detail of these proposals should not hold up the main announcement on Wednesday.

M

I am copying this letter to Catherine Bannister (Home Office), the Private Secretaries to other Members of 'H' Committee, of the Attorney General and to Trevor Woolley (Cabinet Office).

Yours sincerely,

Caroline Slocock

CAROLINE SLOCOCK

Roger Bright, Esq.,
Department of the Environment

PRIME MINISTERDOGS

Attached are proposals from the Home Secretary and the Secretary of State for the Environment on dogs, with advice from John Mills.

Both Mr. Hurd and Mr. Ridley are eager to make an announcement next week to counter mounting Parliamentary pressure to introduce a dog registration scheme. They seek agreement to do so by Monday. *Agreed*

John Mills supports their proposals, but thinks they will need strong presentation if pressure for a dog registration scheme is to be resisted. He suggests you warmly endorse the proposals, but go further by urging better enforcement of the law on muzzles and leads (including effective publicity); and tougher action on dog-fouling.

The first is particularly attractive, because action can be taken immediately, although there may be cost implications. John's proposals on dog-fouling may need some thinking through before any firm announcement could be made. ✓

Mr. Ridley advises that there is danger on Wednesday from an amendment to the Local Government and Housing Bill which seeks to introduce dog registration. An announcement on that day of what the Government proposes therefore seems desirable. But it may be that the further suggestions John Mills proposes could hold any announcement up.

Do you agree:

- from the DoE letter to the Lord President - G. looks as if there is no need for further resources to L.A's.*
- to the additional suggestion of John Mills and to his caution about what is said publicly about costs;
 - but that consideration of the details of these further proposals should not hold up an announcement on Wednesday by both Mr. Hurd and Mr. Ridley?

CPS
CAROLINE SLOCOCK

9 June 1989

With regard to the additional proposals about play areas in parks - this will be some time to work out. Agree that main announcement goes ahead on Wednesday PM

DOGS

Douglas Hurd's and Nicholas Ridley's proposals are sensible and imaginative, and will provide a thorough Government response to all the pressures for a dog registration scheme. They tie in closely with the Litter initiative. But because of the pressures for registration very strong presentation of the Government's case will be needed.

I have the following specific comments:

(i) Dog fouling

This is such a big problem in parks and play areas that strong measures are essential. Many people will be cynical about the practical effects of simply putting a duty on local authorities to clear up. The only effective way to keep the ground clean in such places is to keep dogs out.

The Labour policy review itself has proposals on this: to encourage local authorities to establish 'non-dog' areas in parks.

The Government should perhaps go beyond this and invite authorities to designate

- parks/play areas where dogs are absolutely prohibited;
- in other parks, dog areas not 'non-dog' areas ie to fence off the dogs not the children.

This would help meet the concern of parents who are alarmed at the way dogs are overrunning so

many parks, with all the health hazards and unpleasantness involved for their children.

(ii) Enforcement of law on muzzles and leads

There is surprisingly strong existing law on this which is simply not enforced. In particular a "ferocious" dog must be muzzled if off the lead in urban public places. If this is to be enforced immediate and effective publicity is needed to raise awareness, and clear guidance on breeds considered ferocious. Rottweilers, certainly. Proper enforcement of muzzles and leads will go a long way to easing the dangerous dogs problem and it can be put in hand straightaway.

(iii) Costs falling on local authorities

We should be careful at this stage about saying that the costs - eg. of a warden scheme - can 'easily' be borne from the community charge. There may be cases, especially in London, where the only realistic approach may be to reflect at least some of the costs in revenue support grant.

The response on dogs will impact on the litter initiative, and the Association of District Councils is already lobbying about the likely costs of that.

For the time being, a more cautious stance on this than suggested by Nicholas Ridley is advisable. Otherwise the Government will remain under intense pressure to finance the whole operation through a registration scheme, the very bureaucracy we are trying to avoid.

Recommendation

Warmly support Douglas Hurd's and Nicholas Ridley's proposals, but urge

- a tougher approach on dog fouling with, for example, dog segregation in designated parks etc as a specific element in the duty on local authorities
- better enforcement of existing law on muzzles and leads for "ferocious" dogs
- a cautious approach for the time being on what is said publicly about funding.

John Mills

JOHN MILLS



QUEEN ANNE'S GATE LONDON SW1H 9AT

9 June 1989

Dear Lord Greville

Following the recent reports of attacks by Rottweilers and other dogs, we have reviewed the legislation relating to dangerous dogs. This letter sets out my proposals.

Dangerous dogs are controlled by three Acts. Under the Town Police Clauses Act 1847 it is an offence to have an unmuzzled ferocious dog at large (i.e. off a lead) in a street and open spaces and parks in urban areas. The Animals Act 1971 holds the keeper of an animal liable for damage which it may cause.

The principal legislation is the Dogs Act 1871. This allows the court to make an order for a dangerous dog "to be kept by the owner under proper control or destroyed, and any person failing to comply shall be liable to a penalty not exceeding £1" per day .

I am seeking to remedy the deficiencies in this Act with a short amending Bill. As the courts have interpreted the Act, it is the owner who has to destroy the dog or, in default, become liable for the penalty. I am proposing that the Act is amended so that the dog is destroyed by a person nominated by the court.

A second deficiency is clearly the penalty. Because it is on the face of the Act, it can be varied only by primary legislation. I am proposing that it should be set at level 3, which is currently a maximum of £400.

I would also like to give the court powers to ban the person against whom the order is made from owning or keeping a dog.

Appeal against an order "directing a dog to be destroyed" is provided by the Dogs Amendment Act 1938. I am proposing that these words are deleted so as to allow appeals as well against control orders; the new, higher penalties; and a ban.

The Dogs Act 1871 does not create an offence so that all aspects of criminal procedure are not attracted. There is advantage in retaining this and I consider that we can achieve a good deal by a small, tightly drafted Bill to increase the effectiveness of the penalties under the Dogs Act 1871. Any more elaborate measure would be difficult to defend against unwelcome amendments and would not necessarily achieve anything more in practice. There is considerable advantage in effecting these simple changes quickly.

The Dogs Act 1871 applies in both Scotland and Northern Ireland and the amending Bill could extend there if Malcolm Rifkind and Tom King so wish.

Subject to the agreement of colleagues on the policy, I propose to make an early approach to L Committee with a view to handing out such a measure to a Private Member for passage through Parliament, if possible without debate in the House of Commons, before the end of this Session.

I am under some pressure to make an announcement about dangerous dogs and John McAllion has an adjournment debate on 15 June. Nicholas Ridley has already indicated that he would be greatly helped if I could make an announcement of the measures we have in mind, subject to there being a legislative opportunity, at the same time as he outlines his proposals concerning dogs next Wednesday, 14 June, at the Report Stage of the Local Government and Housing Bill. In order to be in a position to meet the earlier deadline, I would be grateful if colleagues could signify their agreement to what I am proposing by Monday evening, 12 June.

I am sending copies of this letter to other members of H Committee, the Attorney General, the Committee Secretaries and to First Parliamentary Counsel.

Yours sincerely

Catherine Bunnick

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE



2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Dominic Morris Esq
Private Secretary
10 Downing Street
London SW1A 2AA

8 June 1989

Dear Dominic

DOGS

My Secretary of State has asked that the attached letter he sent today to the Lord President and members of H Committee, setting out his proposals on dogs policy, should also be copied to the Prime Minister.

I am copying this letter only to the Private Secretaries to the Lord President, Members of H Committee and to Trevor Woolley in Sir Robin Butler's Office.

R BRIGHT
Private Secretary



MARSHAM STREET
LONDON SW1P 3EB
1-276 3000

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

y ref

our ref

8 June 1989

Dear John

DOGS

As colleagues will be aware, the recent spate of reported attacks by Rottweiler dogs has given new impetus to the RSPCA campaign for a national dog registration scheme. An Early Day Motion pressing for a national scheme has been signed by 245 members so far, including 113 of our supporters. We understand that Janet Fookes is proposing to put forward an amendment to the Local Government and Housing Bill, when it comes back to the House on Report next week, which would place a duty on me to make regulations requiring local authorities to operate a registration scheme. The amendment may be out of order, but the level of backbench support for the proposal puts us in some danger if the amendment is in order and pressed to a vote. A similar amendment has also been tabled by SLD members.

I am myself clear that a registration scheme, whether national or local, is not the answer to any of the problems raised by dog ownership - attacks by dangerous animals, stray dogs and dog fouling. Douglas Hurd is, I understand, writing to colleagues seeking their approval to a package of measures to strengthen existing powers to control dangerous dogs. I would like colleagues' agreement to my announcing next week a parallel package of measures to deal with fouling and strays (to be included in next Sessions Environment Protection Bill), when Janet Fookes' amendment would be debated, if allowed.

Even if the amendment is not selected, I think we should make an early announcement (subject to colleagues' agreement) since the pressure from the public and our own backbenchers is considerable and increasing, and our present stance is proving difficult to defend. I also think it essential that if we are successfully to resist an amendment calling for a compulsory dog registration scheme and satisfy both the public and our own backbenchers we must be able to present a package of measures which deals both with dangerous dogs and the problems of strays and dog fouling. The announcement of Douglas' proposals and mine would therefore need to be co-ordinated.

Strays

Both the police and local authorities (following our amendment to the 1988 Local Government Act) have powers to pick up, hold and destroy dogs which they believe to be strays. There is a duty on the police to detain stray dogs if they are brought in to them by a member of the public. I propose that the existing powers

should be turned into a duty on local authorities to deal with strays, relieving the police of an onerous and unnecessary burden. I envisage that this duty would operate on the same basis as the proposals I am shortly to make to colleagues on litter: it should be a pro-active duty requiring the local authority to seize dogs in its area which might reasonably be believed to be strays, a duty which could be enforced by the citizen on application to a magistrate for the necessary order.

As a further extension to existing powers, I would propose that a substantial fine should be payable by owners seeking to collect their dogs which had been detained after straying. The level of the fine would be a matter for discussion with the Home Office. Unlike the proposals I have made on litter, I would not however consider that it is necessary to issue a Code of Guidance on how local authorities should carry out their new duties; it would be up to them to decide, for example, whether a dog warden system would be the best way of carrying them out, or not.

I also propose that local authorities should be given a clarified duty to enforce the requirement under the Control of Dogs Order 1930 that dogs should wear a collar and identity disc when in a public place. The legal position on enforcement, whether by police or the local authority, is currently confused, but as we know, it is more honoured in the breach than the observance. Resting this duty clearly on the local authorities might raise issues as to the powers of local authority representatives to enforce the requirement, and in particular, the powers of dog wardens to seek information from members of the public on the street. These are matters which my officials will need to discuss in more detail with Home Office officials. I do not, however, believe it necessary to increase the present maximum fine of £2,000.

Fouling

As part of my package on litter, I propose to include dog faeces among the categories of rubbish with which local authorities should have a duty to deal. I propose announcing this item separately from the general litter package, in the House next week.

Resource implications

An announcement of a package on these lines will undoubtedly provoke demands from local authorities that they should be given additional resources to deal with their new duties. I am wholly opposed to any proposal for a hypothecated tax. Estimates prepared by the London School of Economics for the RSPCA conclude that the cost of a local Dog Warden System, including kennelling charges for unclaimed strays, is no more than £30,000 per warden. Bradford, for example, employs 5 wardens to operate a scheme

widely recognised as efficient. This level of cost is one which can easily be borne from the Community Charge and the bureaucracy and resource costs involved in a hypothecated tax would be entirely unjustifiable. It would be a most expensive tax to collect and subject to widespread evasion. I am sure we should avoid being exposed to rebates for the less well off, benefit claimants, etc, by simply not having such a tax.

Other Measures

There are currently powers for local authorities to make byelaws requiring dogs to be kept on leads on roads, in parks, pleasure gardens and on beaches. In order to encourage greater use of these powers, it might be helpful to simplify the current procedures set out in the Road Traffic Acts as regards roads and to clarify the criteria for approval by the Home Office of byelaws relating to parks and gardens. I would like to be able to announce next week that we will be looking further at these matters.

Conclusions

I would be grateful for colleagues' agreement to announce next week a package;

- i. placing a duty on local authorities to deal with strays;
- ii. empowering local authorities to fine owners who have allowed their dogs to stray and to charge for kennelling stray dogs who are later claimed by their owners;
- iii. placing a clear duty on local authorities to enforce the regulations relating to collars and identification tags;
- iv. placing a duty on local authorities to clear up dog faeces; and
- v. Reviewing the present powers of local authorities to make byelaws requiring dogs to be kept on leads.

The debate on Janet Fookes' amendment would be likely to take place on Wednesday next week. I would therefore be grateful for colleagues' comments on what I propose by close of play on Monday 12 June at the latest. I am conveying this to H Committee colleagues, to David Butler.

Sent by Roger